

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

07 JUL 20 PM 12:15

Dianna Hunt
CLERK, DISTRICT COURT

IN THE NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700 **434**

ALBERT JOSE RAMIREZ

TEDDY L. HARTLEY

DOB: [REDACTED], 1988

SOC: [REDACTED]

STN: 050100070340

Defendant.

Crime(s): **Count 1: First Degree Murder (Willful and Deliberate)**
Connt 2: Tampering with Evidence
Count 3: Tampering with Evidence

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

Count 1: First Degree Murder (Willful and Deliberate), in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did kill Eladio Robledo, with the deliberate intention to take away the life of or any other human being, N.M.S.A. 1978, contrary to Section 30-2-1(A)(1), a capital offense.

• **Count 2: Tampering with Evidence (Third Degree Felony)**, in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did destroy/change/hide/fabricate/place a firearm with the intent to prevent the apprehension,

EXHIBIT

A

prosecution or conviction of Albert Ramirez OR create the false impression that another person had committed a crime, NMSA 1978, contrary to Section 30-22-05, a third degree felony.

Count 3: **Tampering with Evidence (Third Degree Felony)**, in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did destroy/change/hide/fabricate/place jeans with the intent to prevent the apprehension, prosecution or conviction of Albert Ramirez OR create the false impression that another person had committed a crime, NMSA 1978, contrary to Section 30-22-05, a third degree felony.

The names of the witnesses upon whose testimony this Indictment is based are as follows:

1. Brent Aguilar, Clovis Police Department, Clovis, NM 88101;
2. Debra Ramirez, 512 W. 6th Street, Clovis, NM 88101;
3. Ivan Vasquez, 714 W 13th #A, Clovis, NM 88101;
4. Roger Grah, Clovis Police Department, 300 Connelly, Clovis, NM 88101;
5. Sam Saiz, 515 W. 6th, Clovis, NM 88101;
6. Sandy Loomis, Curry County Sheriff's Office, 700 N Main, Clovis, NM 88101;
7. Waldo Casarez, Curry County Sheriff's Department, Clovis, NM 88101;
8. James Patterson, 910 East 6th Street OR 1100 Wallace, Clovis, NM 88101

I hereby certify that the foregoing Indictment is a True Bill.

Trudy McLeek
FOREMAN

DATED: 7-20-07

Defendant's Address: [REDACTED]
Defendant's S.S.N.: [REDACTED] 3
D.A. Case Number: 07-471
Magistrate Number: M-12-FR-200700389

APPROVED:

Matth Chen L, D.A.

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ
DOB: [REDACTED] 1988
SSN: [REDACTED] 7793
STN: 050100070340

Defendant.

FILED IN OPEN COURT

this 26 day of Jan, 2024
at 1:30 clock P m

Teddy L. Hartley
TEDDY L. HARTLEY
District Judge

No. D-0905-CR-0200700434
D-0905-CR-0200800748

GUILTY PLEA AGREEMENT

The State of New Mexico and the defendant hereby agree to the following disposition of this case:

Plea: The defendant agrees to plead guilty to the following offenses:

In D-0905-CR-0200700434: Count I: First Degree Murder (Willful and Deliberate);

In D-0905-CR-0200800748: Count I: Battery Upon a Peace Officer; Count II: Assault on a Peace Officer.

Officer.

Terms: This agreement is made subject to the following conditions:

1. Agreement as to sentence. That the following disposition will be made of the charges:

In D-0905-CR-0200700434: Count I: The Defendant shall be sentenced to Life Imprisonment.

In D-0905-CR-0200800748: Count I: The Defendant shall be sentenced to eighteen (18) months;

Count II: The Defendant shall be sentenced to three hundred and sixty four (364) days.

Cause numbers D-0905-CR-0200700434 and D-0905-CR-0200800748 shall run concurrently.

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EXHIBIT

B

Defendant will pay \$5.00 for the "Domestic Violence Offender Treatment Fee", pursuant to §34-15-1, NMSA, 1978.

Defendant shall provide a sample of biological material sufficient for DNA testing and pay a \$100 DNA testing fee to the New Mexico Department of Corrections for the combined DNA Index System (CODIS) pursuant to the DNA Identification Act §29-16-1, N.M.S.A. 1978 Compilation, as amended.

1. That the Ninth Judicial District Attorney will make no agreements with regard to recommendations for sentence other than contained herein. That, specifically, the Ninth Judicial District Attorney will file any applicable habitual criminal charge permitted by New Mexico law.

2. Additional charges. *Went*

In D-0905-CR-0200700434: Count II: Tampering with Evidence and Count III Tampering with Evidence are hereby dismissed. Additionally, Magistrate Cause Number M-12-MR-0200800638 shall be dismissed.

3. Restitution: The defendant agrees to pay restitution as follows: Restitution will be ordered in accordance with §31-17-1, NMSA 1978. The Defendant agrees to make restitution on all charges whether or not dismissed or not filed pursuant to this agreement. ✓

4. Effect on charging document. That this Agreement, unless rejected or withdrawn, serves to amend the Indictment, Information, or Criminal Complaint to charge the offense to which the defendant pleads without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.

5. Waiver of defenses and appeal. Unless this plea is rejected or withdrawn, the

defendant hereby gives up any and all motions, defenses, objections or requests which he has made or raised, or could assert hereafter, to the Court's entry of judgment against him and imposition of a sentence consistent with this agreement. The defendant waives the right to appeal the conviction that results from the entry of this plea agreement.

6. **Withdrawal permitted if agreement rejected.** If after reviewing this Agreement and any presentence report, the Court concludes that any of its provisions are unacceptable, the Court will allow the withdrawal of the plea, and this Agreement shall be null and void. If the plea is withdrawn, neither the plea nor any statements arising from the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I understand that entry of this plea agreement may have an effect upon my immigration or ^{NA} naturalization status.

I have read and understand the above. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading guilty I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. ~~I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.~~ ^{NA} I agree to enter my plea as indicated above on the terms and conditions set forth herein.

01-26-09

DATE

Alberto Ramirez

DEFENDANT

DEFENSE COUNSEL REVIEW

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and all possible defenses.

1-26-09
DATE

[Signature]
DEFENSE COUNSEL

PROSECUTOR REVIEW

I have reviewed this matter and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

1/26/2009
DATE

[Signature]
PROSECUTOR

DISTRICT COURT APPROVAL

The defendant personally appearing before me and I have concluded as follows:

TJH
1/26

That the defendant understands the charges set forth in the Indictment.
That the defendant understands the range of possible sentence for the offenses charged, from a suspended sentence to a maximum of 1 1/2 + 9 1/2 years

TJH

That the defendant understands the following constitutional rights which the defendant gives up by pleading guilty:

- (a) the right to trial by jury, if any.
- (b) the right to the assistance of an attorney at all stages of the proceedings, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one.
- (c) the right to confront the witnesses against him and to cross-examine them as to the truthfulness of their testimony.
- (d) the right to present evidence on his own behalf, and to have the state compel witnesses of his choosing to appear and testify.
- (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.

TUH
4

That the defendant wishes to give up the constitutional rights of which the defendant has been advised.

TUH
12th

That there exists a basis in fact for believing the defendant is guilty of the offenses charged and that an independent record for such factual basis has been made.

TUH
12th

That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.

TUH
12th

That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.

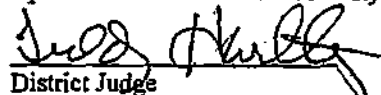
TUH
12th

That under the circumstances, it is reasonable that the defendant plead guilty.

TUH
12th

That the defendant understands that a conviction may have an effect upon the defendant's immigration or naturalization status.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads guilty to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.


District Judge

11-26-09
Date

MEC/jrg

01/27/2009 10:19 5057693198

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STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY

NEW MEXICO
COUNTY OF CURRY
FILED IN COURT

2009 FEB -3 PM 3:34

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ
DOB: [REDACTED] 1988
SSN: [REDACTED] 7793
STN: 050100070340

No. D-0905-CR-0200700434
D-0905-CR-0200800748

Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER having come before the Court on the 26th day of January, 2009, before the Honorable Teddy L. Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant appearing personally and by his attorney, Brett Carter, and the Defendant having been convicted on the 26th day of January, 2009, pursuant to a guilty plea agreement accepted and recorded by the Court of the following crimes:

D-0905-CR-0200700434: COUNT I: FIRST DEGREE MURDER;

D-0905-CR-0200800748: COUNT I: BATTERY ON A PEACE OFFICER; a 4th Felony.

COUNT II: ASSAULT ON A PEACE OFFICER, a misdemeanor.

Defendant is hereby found and adjudged guilty and convicted of said crimes, and is sentenced to be imprisoned by the Department of Corrections for the following terms:

D-0905-CR-0200700434: COUNT I: FIRST DEGREE MURDER- Life Imprisonment;

State v. Albert Ramirez
Judgment, Sentence and Commitment
advising

Page 1 of 1

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EXHIBIT

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PAGE 03/04

D-0905-CR-0200800748: COUNT I: BATTERY ON A PEACE OFFICER- eighteen (18) months;

COUNT II: ASSAULT ON A PEACE OFFICER- three hundred and sixty four (364) days.

IT IS FURTHER ORDERED that Count I and Count II in cause number D-0905-CR-0200800748 shall run concurrent with Count I in cause number D-0905-CR-0200700434.

In D-0905-CR-0200700434: Count II: Tampering with Evidence and Count III: Tampering with Evidence are hereby dismissed per the plea agreement.

IT IS THEREFORE ORDERED that the defendant be committed to the Department of Corrections for a total term of Life Imprisonment.

Defendant shall provide a sample of biological material sufficient for DNA testing and pay a one hundred dollar (\$100.00) DNA testing fee to the New Mexico Department of Corrections for the Combined DNA Index System (CODIS) pursuant to the DNA Identification Act pursuant to NMSA 1978, § 29-16-1; and shall pay five dollars (\$5.00) for the domestic violence offender treatment fee, pursuant to NMSA 1978, § 31-12-11.

If the defendant is ever granted parole, defendant shall undergo a minimum period of parole of five (5) years pursuant to NMSA 1978, § 31-21-10(B).

Defendant shall receive credit for five hundred and sixty-one (561) days pre-sentence confinement (from July 15, 2007 to January 26, 2009), and for post-sentence confinement from January 27, 2009 until delivery to the Department of Corrections.

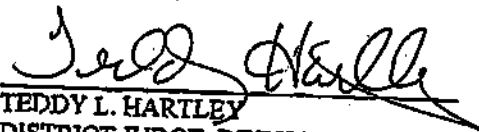
Therefore, You, the Sheriff of Curry County, are hereby commanded to take Defendant in

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custody and deliver Albert Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive and confine him for the above term.


TEDDY L. HARTLEY
DISTRICT JUDGE, DIVISION III

HAVE SEEN:


MATTHEW CHANDLER
DISTRICT ATTORNEY
ATTORNEY FOR PLAINTIFF


BRETT CARTER
PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT

RP 307

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY

2009 FEB 25 PM 1:39

STATE OF NEW MEXICO,
Plaintiff,

No.: D-0905-CR-0200700434
D-0905-CR-0200800748

vs.

ALBERT JOSE RAMIREZ,
Defendant:

MOTION TO WITHDRAW PLEA OF GUILTY

COMES NOW Defendant Albert Jose Ramirez, by and through his attorneys, and seeks leave of the Court to withdraw his plea of guilty entered in the above-entitled cause on January 26, 2009, and as grounds therefore would show:

1. Defendant was charged with one count of first degree murder and two counts of tampering with evidence in cause number D-0905-CR-0200700434.
2. Defendant was charged with two counts of battery on a peace officer in cause number D-0905-CR-0200800748.
3. Defendant was also charged with one count of assault in Curry County Magistrate Court.
4. Defendant was arrested July 15, 2007 and has been in custody since his arrest.
5. An order finding defendant currently incompetent to stand trial and committing Defendant to the Las Vegas Medical Center for treatment was filed April 17, 2008. Defendant was admitted to that facility on June 5, 2008. On August 18, 2008, The Las Vegas Medical Center prepared a final report finding defendant competent to stand trial.

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EXHIBIT

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6. A competency hearing was set based upon the report submitted by the Las Vegas Medical Center. After hearing the testimony of Dr. Burness the court found the defendant competent to stand trial. The court ordered the matter be set for jury trial.
7. Attorneys for the defendant then interviewed prosecution witnesses, reviewed the evidence and visited the crime scene and then discussed the case with the defendant. Defendant requested defense counsel contact the prosecutor with a verbal plea offer of twenty five years in custody. That offer was relayed to Chief Deputy Andrea Reed. The defendant's offer was rejected by the state the Friday before trial.
8. The trial for first degree murder started on January 26, 2009. Counsel for the state and defendant completed voir dire. Several jurors then had to be independently examined. After lunch the defendant wanted to discuss the case with his brother. During a break the defendant was allowed to meet with his brother. Upon returning to the court room the defendant stated he wanted to plea. Defendant's counsel met with the state and requested the offer in writing as required by Rule 5-304 NMRA. While the state was putting the offer in writing the defendant and his attorneys met. The state then handed a written offer to the defendant's counsel. The offer was read to defendant and after having discussed the agreement the parties signed it. A plea hearing was heard before the Honorable Teddy Hartley. The defendant entered a plea to First Degree Murder, Battery on a Peace Officer and Assault on a Peace Officer. The charges were to run concurrent. In addition to one count of Battery on a Peace Officer being reduced to a misdemeanor, the two counts of tampering were dismissed and an assault charge was dismissed. The court after inquiry of the defendant accepted the plea and sentenced the defendant to life in prison, with parole eligibility after thirty years.

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9. The Judgment, Sentence and Commitment was filed February 3, 2009. The defendant was transported to the New Mexico Department of Corrections.
10. Counsel for defendant was contacted on February 2 and 3, 2009 and defendant left a message that he wanted to withdraw his plea. Counsel for defendant was then contacted by phone and defendant stated, "He wanted to withdraw his plea since he was not in the right state of mind when he entered the plea." Upon further inquiry by counsel, Defendant stated he was under considerable stress due to the trial, his aunt was severely ill and he was suffering from a mental illness.
11. The defendant timely brought his motion to withdraw his plea by leaving a message with his attorneys that he desired to withdraw his plea.
12. Defendant's plea of guilty entered on January 26, 2009 in the above-entitled cause was neither knowing nor intelligent due the stress defendant was under.
13. Due to defendant's mental health issues the court should allow the defendant to withdraw his plea to avoid a manifest injustice.
14. There is no prejudice to the state by allowing the withdrawal of the plea. All of the evidence and witnesses are still available and there is no prejudice or harm to the states ability to try the defendant by allowing the plea to be withdrawn.
15. Entering a plea of guilty requires the waiver of many fundamental constitutional rights. This Court is required to "indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

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16. Finally, Defendant, by and through counsel urges this Court to keep foremost in its considerations the New Mexico Supreme Court's recent declaration: "An essential function of the courts is to 'serve as the ultimate guardians of an indigent defendant's constitutional rights'...courts "must enforce the rights guaranteed by the constitution and further the intent of its provisions," *State v. Young*, 172 P.3d 138, 142 (2007).

WHEREFORE, Defendant respectfully requests that he be permitted to withdraw his plea of guilty in the above-entitled matter and reset the matter for a jury trial and for any other relief the court deems appropriate.

Respectfully submitted,


BRETT J. CARTER
District Public Defender

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.


PUBLIC DEFENDER DEPARTMENT

RP 312

08/26/2011 4:31 PM FAX 57 PUBLIC DEFENDER DEPT Attorney

NO. 468 P. 2002/002

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

2011 SEP -6 PM 3: 38

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

Defendant.

No. D-0905-CR-0200700434

D-0905-CR-0200800748

ORDER

THIS MATTER coming on before the Court this 26th day of August, 2011, the State appearing by Brian Stover, Deputy District Attorney, and Defendant appearing personally and by attorney, Brett Carter, Assistant Public Defender, and the Court being well and sufficiently advised in the premises:

IT IS HEREBY ORDERED that the Defendant is allowed to withdraw from the plea in the above-mentioned cause numbers filed on January 26, 2009.


TEDDY L. HARTLEY
DISTRICT JUDGE

HAVE SEEN:


BRIAN STOVER
DEPUTY DISTRICT ATTORNEY


BRETT CARTER
ATTORNEY FOR THE DEFENSE

D.A. No. 09AP-04-471
BS/jrg

EXHIBIT

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NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
FILED

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

2013 OCT 11 PM 3:05

John E. Ramirez
Clerk of the Court

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ

No. D-0905-CR-0200700434

Defendant.

SPECIAL VERDICT FORM

Do you unanimously find beyond a reasonable doubt that a firearm was used in the
commission of the murder as charged in Count I?

YES (Yes or No)

Lisa Lalou

FOREPERSON

10-11-13

EXHIBIT

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STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

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2013 OCT 11 PM 3:05

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

Defendant.

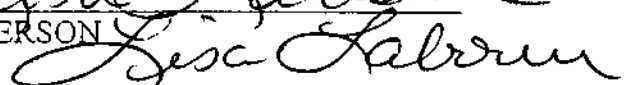
No. D-0905-CR-0200700434

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT I: FIRST DEGREE MURDER.


FOREPERSON

DATED:


10-11-13

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STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

2013 OCT 11 PM 3:05

Albert Ramirez

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT II: TAMPERING WITH
EVIDENCE.

Lisa Labrum
FOREPERSON

DATED: 10-11-13

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
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2013 OCT 11 PM 3:05

STATE OF NEW MEXICO,

Plaintiff,

v.


ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT III: TAMPERING WITH
EVIDENCE.


FOREPERSON

DATED:

10-11-13

STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN MY OFFICE

Jury Instruction No. 1

OCT 11 2013

AM 11:40

Shelli Burger
Clerk District Court

The law governing this case is contained in these instructions, and it is your duty to follow that law. You must consider these instructions as a whole. You must not pick out one instruction or part of an instruction and disregard others.

EXHIBIT

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Jury Instruction No. 2

The law presumes the Defendant to be innocent unless and until you are satisfied beyond a reasonable doubt of his guilt.

The burden is always on the State to prove guilt beyond a reasonable doubt. It is not required that the state prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act in the graver and more important affairs of life.

Jury Instruction No. 3

Each crime charged in the information should be considered separately.

Jury Instruction No. 4

For you to find the Defendant guilty of First Degree Murder by a deliberate killing as charged in Count I, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant killed Eladio Robledo;
2. The killing was with the deliberate intention to take away the life of Eladio Robledo;
3. This happened in New Mexico on or about the 12th day of July, 2007.

A deliberate intention refers to the state of mind of the Defendant. A deliberate intention may be inferred from all of the facts and circumstances of the killing. The word deliberate means arrived at or determined upon as a result of careful thought and the weighing of the consideration for and against the proposed course of action. A calculated judgment and decision may be arrived at in a short period of time. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not a deliberate intention to kill. To constitute a deliberate killing, the slayer must weigh and consider the question of killing and his reasons for and against such a choice.

Jury Instruction No. 5

For you to find the Defendant guilty of Second Degree Murder, as charged in Count 1, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant killed Eladio Robledo;
2. The Defendant knew that his acts created a strong probability of death or great bodily harm to Eladio Robledo;
3. The Defendant did not act as a result of sufficient provocation;
4. This happened in New Mexico on or about the 12th day of July, 2007.

Jury Instruction No. 6

For you to find the Defendant guilty of Voluntary Manslaughter, as charged in Count 1, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant killed Eladio Robledo;
2. The Defendant knew that his acts created a strong probability of death or great bodily harm to Eladio Robledo;
3. This happened in New Mexico on or about the 12th day of July, 2007.

The difference between second degree murder and voluntary manslaughter is sufficient provocation. In second degree murder, the defendant kills without having been sufficiently provoked, that is, without sufficient provocation. In the case of voluntary manslaughter the defendant kills after having been sufficiently provoked, that is, as a result of sufficient provocation. Sufficient provocation reduces second degree murder to voluntary manslaughter.

Jury Instruction No. 7

"Sufficient provocation" can be any action, conduct or circumstances which arouse anger, rage, fear, sudden resentment, terror or other extreme emotions. The provocation must be such as would affect the ability to reason and to cause a temporary loss of self-control in an ordinary person of average disposition. The "provocation" is not sufficient if an ordinary person would have cooled off before acting.

Jury Instruction No. 8

Great bodily harm means an injury to a person which creates a high probability of death.

Jury Instruction No. 9

You have been instructed on the crimes of First Degree Murder, Second Degree Murder and Voluntary Manslaughter. You must consider each of these crimes. You should be sure that you fully understand the elements of each crime before you deliberate further.

You will then discuss and decide whether the Defendant is guilty of First Degree Murder. If you unanimously agree that the Defendant is guilty of First Degree Murder, you will return a verdict of guilty of First Degree Murder. If you do not agree, you should discuss the reasons why there is a disagreement.

If, after reasonable deliberation, you do not agree that the Defendant is guilty of First Degree Murder you should move to a discussion of Second Degree Murder. If you unanimously agree that the Defendant is guilty of Second Degree Murder, you will return a verdict of guilty of Second Degree Murder. If you do not agree you should discuss the reasons why there is a disagreement.

If, after reasonable deliberation, you do not agree that the Defendant is guilty of Second Degree Murder you should move to a discussion of Voluntary Manslaughter. If you unanimously agree that the Defendant is guilty of Voluntary Manslaughter, you will return a verdict of guilty of Voluntary Manslaughter.

You may not find the Defendant guilty of more than one of the foregoing crimes. If you have a reasonable doubt as to whether the Defendant committed any one of the crimes, you must determine that he is not guilty of that crime. If you find him not guilty of all of these crimes, you must return a verdict of not guilty.

Jury Instruction No. 10

For you to find the Defendant guilty of Tampering with Evidence as charged in Count II, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant hid or placed a firearm;
2. The Defendant intended to prevent the apprehension, prosecution or conviction of himself;
3. This happened in New Mexico on or about the 12th day of July, 2007.

Jury Instruction No. 11

For you to find the Defendant guilty of Tampering with Evidence as charged in Count III, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant hid or placed clothing in a dumpster;
2. The Defendant intended to prevent the apprehension, prosecution or conviction of himself;
3. This happened in New Mexico on or about the 12th day of July, 2007.

Jury Instruction No. 12

You are the sole judges of the facts in this case. It is your duty to determine the facts from the evidence produced here in court. Your verdict should not be based on speculation, guess or conjecture. Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case.

Jury Instruction No. 13

You alone are the judges of the credibility of the witnesses and the weight to be given to the testimony of each of them. In determining the credit to be given to any witness, you should take into account the witness's truthfulness or untruthfulness, ability and opportunity to observe, memory, manner while testifying, any interest, bias or prejudice the witness may have and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

Jury Instruction No. 14

An expert witness is a witness who, by knowledge, skill, experience, training or education, has become expert in any subject. An expert witness may be permitted to state an opinion as to that subject.

You should consider each expert opinion and the reasons stated for the opinion, giving them such weight as you think they deserve. You may reject an opinion entirely if you conclude that it is unsound.

Jury Instruction No. 15

You must not concern yourself with the consequences of your verdict.

Jury Instruction No. 16

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agrees. Your verdict must be unanimous.

It is your duty to consult with one another and try to reach an agreement. However, you are not required to give up your individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own view and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of reaching a verdict.

You are judges- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Jury Instruction No. 17

In this case as to Counts II and III, there are two possible verdicts as to each crime charged:

1. guilty; and
2. not guilty.

Only one of the possible verdicts may be signed by you as to each charge. If you have agreed upon one verdict as to a particular charge, that form of verdict is the only form to be signed as to that charge. The other form as to that charge is to be left unsigned.

Jury Instruction No. 18

If you find the Defendant guilty of Count 1, then you must determine if the crime was committed with the use of a firearm and report your determination. You must complete the special form to indicate your finding. With respect to any crime, for you to make a finding of "yes", the State must prove to your satisfaction beyond a reasonable doubt that the crime was committed with the use of a firearm.

Jury Instruction No. 19

I will now ask you to retire to the jury room to begin your deliberations. You will be provided a copy of the jury instructions and the exhibits introduced as evidence [will be made available to you].

Prior to beginning your deliberations you will need to select one of you to act as foreperson. That person will preside over your deliberations and will speak for the jury here in court.

Forms of verdict have been prepared for your use.

You will take these forms to the jury room; when you have reached unanimous agreement as to your verdict, the foreperson will sign the forms which express your verdict. You will then return all forms of verdict, these instructions and any exhibits to the courtroom.

Margaret McDonald and Ruth Schell are alternate jurors in this case and therefore will need to remain in the courtroom.

Given _____

Refused _____

State Requested Instruction No. _____

U.I.I. 14-6020

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT I: VOLUNTARY
MANSLAUGHTER.

FOREPERSON

DATED:

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, NOT GUILTY of COUNT I.

FOREPERSON

DATED:

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, NOT GUILTY of COUNT II: TAMPERING WITH
EVIDENCE.

FOREPERSON

DATED:

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, NOT GUILTY of COUNT III: TAMPERING WITH
EVIDENCE.

FOREPERSON

DATED:

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT I: SECOND DEGREE
MURDER.

FOREPERSON

DATED:

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

NINTH JUDICIAL DISTRICT
CURRY COUNTY NM
FILED IN MY OFFICE

2014 JAN -8 AM 11:11

Shelly B. Barger
CLERK DISTRICT COURT

STATE OF NEW MEXICO.

Plaintiff.

v.

ALBERT JOSE RAMIREZ,

DOB: [REDACTED]

SOC: [REDACTED]

STN: 050100070340

No. D-0905-CR-0200700434

Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER coming on for hearing on January 8, 2014, before the Honorable Teddy L. Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant appearing personally and by his attorney, Jesse R. Cosby, Attorney at Law, the Defendant having been convicted on October 11, 2013, pursuant to guilty verdicts by the jury accepted and recorded by the Court of the following crime(s):

Count 1: [0001], Murder in the first degree (willful & deliberate), contrary to §30-02-01(A)(1), NMSA 1978.

Count 2: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Count 3: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

EXHIBIT

H

Defendant is hereby found and adjudged guilty and convicted of said crime(s), and is sentenced to be imprisoned by the Department of Corrections for the following terms:

As to Count 1, a term of life imprisonment.

As to Count 2, a term of three (3) years.

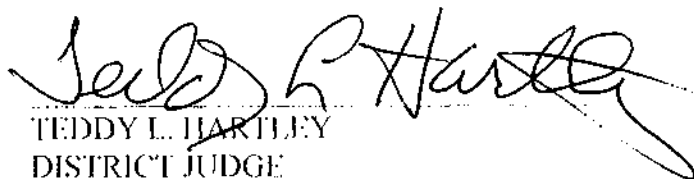
As to Count 3, a term of three (3) years.

Counts 1, 2, and 3, shall run consecutively, one after the other, for a total term of life imprisonment, plus six (6) years. *mental and physical health as available.*

Dept of Corrections should provide mental and physical treatment as available per me
Upon completion of the term provided herein, the Defendant will be subject to release under parole supervision, subject to the statutory provisions relating to condition, supervision and return of parolees.

Therefore, You, the Sheriff of Curry County, are hereby commanded to take Defendant in custody and deliver Albert Jose Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive him and confine Albert Jose Ramirez for the above term.

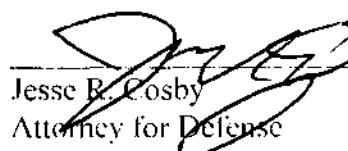
Defendant shall receive credit for 2370 days (6 years, 5 months, 25 days) of pre-sentence confinement, from date of arrest on July 15, 2007, until date of sentencing, January 8, 2014, and for post-sentence confinement from January 9, 2014, until delivery to the Department of Corrections.


TEDDY L. HARTLEY
DISTRICT JUDGE

HAVE SEEN:



Matthew Chandler
District Attorney


Jesse B. Cosby
Attorney for Defense

D.A. MC/jwg

IN THE SUPREME COURT
STATE OF NEW MEXICO

ORIGINAL

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

1 4 / 3 4 5 7 6

No. _____

Curry County No. CR-2007-434

Honorable Teddy Hartley

**DEFENDANT-APPELLANT'S
STATEMENT OF ISSUES**

SUPREME COURT OF NEW MEXICO
FILED

MAR -7 2014



Submitted by:
Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Appellant
P. O. Box 3330
Roswell, NM 88202-3330
(575) 625-0516

EXHIBIT

1

IN THE SUPREME COURT
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

No. _____

Curry County No. CR-2007-434

Honorable Teddy Hartley

TABLE OF CONTENTS

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IN THE SUPREME COURT
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

No. _____

Curry County No. CR-2007-434

Honorable Teddy Hartley

TABLE OF AUTHORITIES

Cases; New Mexico

<i>State v. Boyer</i> , 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1	8, 9
<i>State v. Flores</i> , 2010-NMSC-002, 147 N.M. 542, 226 P.3d 641	8
<i>State v. Franklin</i> , 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982	8, 9
<i>State v. DeGraff</i> , 2006-NMSC-011, 139 N.M. 211, 131 P.3d 61	8, 9
<i>State v. Gallegos</i> , 2007-NMSC-007, 141 N.M. 185, 152 P.3d 828	9
<i>State v. Gonzales</i> , 2007-NMSC-059, 143 N.M. 25, 172 P.3d 162	7
<i>State v. Gutierrez</i> , 2007-NMSC-033, 142 N.M. 1, 162 P.3d 156	9
<i>State v. Quick</i> , 2009-NMSC-015, 146 N.M. 80, 206 P.3d 985	8
<i>State v. Reyes</i> , 2002-NMSC-024, 132 N.M. 576, 52 P.3d 948	8
<i>State v. Rojo</i> , 1999-NMSC-001, 126 N.M. 438, 971 P.2d 829	9
<i>State v. Saiz</i> , 2008-NMSC-048, 144 N.M. 663, 191 P.3d 521	8
<i>State v. Schoonmaker</i> , 2005-NMCA-012, 136 N.M. 749, 105 P.3d 302, rev'd on other grounds, 2008-NMSC-010, 143 N.M. 373, 176 P.3d 1105 .	8
<i>State v. Torres</i> , 2005-NMCA-070, 137 N.M. 607, 113 P.3d 877	7
<i>State v. Urioste</i> , 2011-NMCA-121, __ N.M. __, 267 P.3d 820	8
<i>State v. Wilson</i> , 1993-NMCA-074, 117 N.M. 11, 868 P.2d 656	9

Other Authorities/Rules/Regulations

N.M. Const. art. II, § 14	7
N.M. Const. art. V, § 14	9

IN THE SUPREME COURT
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

No. _____

Curry County No. CR-2007-434
Honorable Teddy Hartley

STATEMENT OF ISSUES
I. NATURE OF PROCEEDINGS

This appeal is from the Ninth Judicial District Court in a criminal matter wherein the Appellant was convicted of murder in the first degree and two counts of tampering with evidence.

This appeal concerns a capital case and is directly to the N.M. Supreme Court pursuant to Article VI, Section 2 of the New Mexico Constitution.

Notice of Appeal was filed February 7, 2014 and this Statement of Issues is timely if filed on or before March 9, 2014.

The Appellant is indigent and will be represented in this matter by the New Mexico Public Defender Department Appellate Division. A copy of the Order

Appointing Appellate Counsel and Granting Free Process is attached hereto as Exhibit A.

This case was previously before this Court on appeal resulting in a mandate allowing the Appellant to withdraw an earlier plea to first degree murder, Cause No. 31,905 decided June 13, 2011.

II. FACTUAL SUMMARY

On or about July 12, 2007, in Clovis, New Mexico, a man named Elado Robledo was shot and killed outside his residence at 512 W. Sixth St. He shared the home with his wife/girlfriend, Debra Ramirez, who is the Appellant's biological mother. The Appellant lived at the house, off and on, unless he had been kicked out for disrupting the couple. At or near the time of the shooting, the Appellant had been so removed, but some of the Appellant's belongings remained at the house. There was some disagreement as to whether the mother had continued to permit the Appellant in the home over the deceased's objections.

Appellant, aged 18 at the time of the incident, was a troubled youth with a checkered history of placements at various juvenile foster care and treatment locales. For the most part, he would live with either foster care providers or other family members until he became frustrated or ejected and then either returned home, moved in temporarily with others or lived on the streets.

A neighbor, Sam Saiz, Jr., testified he had witnessed the dispute between Appellant and the deceased and saw the Appellant shoot the deceased as he was on the ground. The Appellant's mother allegedly witnessed some or all of the incident, but she failed to appear at trial, though subpoenaed by the State.

A person driving by also witnessed portions of the incident. She testified as to the assailant's clothing and what she'd seen in her mirror as she passed by. Her description of clothing was somewhat inconsistent with the neighbor's description. Both were a little inconsistent with clothing later found in a trash bin in an alley where the Appellant had been seen to flee.

The police located a shoe of the Appellant and a pair of shorts. They subsequently located clothing in a trash bin/dumpster in an alleyway several blocks to the north of the scene. No firearm was located.

The Appellant was arrested a few days after the incident at an acquaintance's house. His socks were seized as were his other clothes.

The Appellant called his relative from the Curry County Detention Center after his arrest. These calls were monitored and recorded. The police intercepted the Appellant telling his relative to go to an area behind a business to remove a "ban-ban", which the Appellant later admitted during his testimony was the gun he'd used in self-defense during the shooting.

The disposition of the clothes and the firearm were the basis of the two counts of tampering with evidence. Motions to either merge or dismiss at least one of the two counts were denied.

Before trial, prior counsel had challenged the Appellant's competency to stand trial. One psychologist, Maxann Schwartz, Ph.D., determined he was incompetent. He was transferred to the State Hospital in Las Vegas for treatment to competency. He was found to be malingering and presumptively competent, but difficult to evaluate due to refusal to cooperate. He was evaluated again after trial counsel was appointed following remanded on appeal, and was found to be competent to stand trial by Joanne Burness, Ph.D.

The Appellant was difficult to represent as he continually refused to communicate, at all. He later would talk, but vacillated between high praises for counsel to verbalized dislike and distrust of counsel. He asserted he was mentally challenged due to prior physical inflictions either caused by altercations at the State Hospital with staff, or at least exacerbated by such incident(s) of physical altercations.

He asserted he had a maligned back that was caused by or lead to a different leg length and that he necessitated crutches and/or other care. He insisted his physical issues should be grounds to keep him from being prosecuted. However, he

could not explain how he was able to run several blocks down the alleyways behind the scene after the shooting if he was physically crippled.

At trial, the Appellant behaved poorly. He would rest his head on the table or present as if in pain. He, at one point, tried to stand for a recess, and his leg shackles got caught on a table leg and he tripped. The incident occurred in front of the jury, but the court ruled it was not visible to the jury due to screens being around the court tables and, therefore, not grounds for relief. The leg shackles were ordered removed to avoid another such incident.

The State called its witnesses and established the cause of death as multiple gunshot wounds.

The State put on evidence of prior bad acts of the Appellant, over objection. The State had a firearms dealer testify that the Appellant tried, unsuccessfully, in the near past to acquire a gun. Allegedly, this was to show premeditation.

The State put on testimony of the police that someone had broken a front window at the victim's house and it was supposed to have been done by the Appellant. Again, this was offered, over objection, to establish motive.

The State introduced an incident when the Appellant had smashed his mother's car windshield with his crutches in the last week or so. Again, over objection, this was allowed to show intent and motivation.

The Appellant argued, unsuccessfully, these prior bad acts prejudiced his case.

The Appellant took the stand. He testified he'd been attacked by his "stepfather" and had acted in self defense. He asserted his physical circumstances made the attack more threatening to him and that he was aware the deceased owned a firearm and threatened to use it. He had seen something in the deceased's hands at the time of the incident and that there were two distinct episodes of confrontation as the evidence was located in front of a garage and near a car in front of the house. He explained his loss of his shoe(s) and clothing at the scene as the deceased's actions in assaulting him and his efforts to leave.

Upon cross examination, the Appellant began to become unresponsive and then to accuse his lawyer of being ineffective. He verbally chastised counsel for his perceived lack of competence and failure to ask the right questions of witnesses. He was admonished by the court to answer the questions and to quit being disruptive.

The Appellant was convicted of murder (first degree) and two counts of tampering with evidence. This appeal follows.

III. ISSUES PRESENTED

1. WAS THE APPELLANT DENIED EFFECTIVE ASSISTANT OF COUNSEL?

This issue is raised by Appellant in the record as a whole.

2. WAS THE EVIDENCE SUFFICIENT FOR TWO COUNTS OF TAMPERING?

The Appellant preserved this issue by motion to dismiss or merge and motion for directed verdict.

3. WAS THE APPELLANT PREJUDICED BY PRIOR BAD ACTS EVIDENCE?

The Appellant objected to the introduction of prior acts and moved for a mistrial. These motions were denied.

4. WHETHER COMMENT ON SILENCE DENIED A FAIR TRIAL?

Officer Loomis that he attempted to interview the Appellant. The defense objected and moved for a mistrial for commentary on invocation of rights. The court denied the motion.

IV. LEGAL SUPPORT

1. Inefficient Counsel.

An indigent counsel is entitled to effective assistance of counsel; N.M. Const. art. II, § 14; U.S. Const. amend. VI and XIV; *State v. Gonzales*, 2007-NMSC-059, 143 N.M. 25, 172 P.3d 162; *State v. Torres*, 2005-NMCA-070, 137 N.M. 607, 113 P.3d 877.

The Appellant has a right to raise any issue he feels merited; *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1; *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982; *see, State v. Reyes*, 2002-NMSC-024, 132 N.M. 576, 52 P.3d 948.

2. Sufficient Evidence/Tampering.

A conviction must be supported by substantial evidence for each and every element of the offense; *State v. Saiz*, 2008-NMSC-048, 144 N.M. 663, 191 P.3d 521; *State v. DeGraff*, 2006-NMSC-011, ¶ 34, 139 N.M. 211, 131 P.3d 61; *cf. State v. Quick*, 2009-NMSC-015, ¶ 25, 146 N.M. 80, 206 P.3d 985; *State v. Urioste*, 2011-NMCA-121, ___ N.M. ___, 267 P.3d 820.

3. Prior Bad Acts.

New Mexico Supreme Court Rule 11-404 prohibits the introduction of specific bad acts except if the acts go to establish notice, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident; Rule 11-404(B)(2) NMRA.

Evidence to establish a bad character trait and action in conformity therewith is prohibited; *State v. Schoonmaker*, 2005-NMCA-012, 136 N.M. 749, 105 P.3d 302; *rev'd on other grounds*, 2008-NMSC-010, 143 N.M. 373, 176 P.3d 1105; *State v. Flores*, 2010-NMSC-002, 147 N.M. 542, 226 P.3d 641.

The court must determine, even if admissible, whether the evidence's admission is more prejudicial than probative; Rule 11-403 NMRA; *State v. Gallegos*, 2007-NMSC-007, ¶ 22, 141 N.M. 185, 152 P.3d 828; *cf. State v. Rojo*, 1999-NMSC-001, ¶ 48, 126 N.M. 438, 971 P.2d 829. This decision is reviewable for absence of discretion; *State v. Wilson*, 1993-NMCA-074, 117 N.M. 11, 17, 868 P.2d 656, 662; *Rojo, supra*.

4. Comment on Invocation.

It is highly prejudicial for the State to elicit testimony in front of a jury that the defendant invoked his Fifth Amendment rights; U.S. Const. amend. V; N.M. Const. art. V, § 14; *State v. Gutierrez*, 2007-NMSC-033, 142 N.M. 1, 162 P.3d 156; *State v. DeGraff*, 2006-NMSC-011, 139 N.M. 211, 131 P.3d 61.

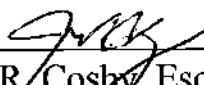
V. APPELLANT'S ISSUES/UNKNOWN

Counsel attempted to communicate with Appellant as to issues he wanted presented, but was unsuccessful after two telephonic attempts. Appellant may ask appellate counsel to add unknown appellate issues; *see, Franklin*, 1967-NMSC-151; *Boyer*, 1985-NMCA-029.

VI. TAPED PROCEEDINGS

All proceedings were audio recorded by the court's monitor to the best of counsel's knowledge, information and belief.

Respectfully submitted,



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Appellant
P.O. Box 3330
Roswell, NM 88202-3330
(575) 625-0516

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing pleading was mailed to the following persons this 6th day of March, 2014, by depositing a copy of the same in the United States mail in a lawfully franked envelope addressed as follows, to wit:

- | | |
|--|---|
| 1. New Mexico Supreme Court
237 Don Gaspar Ave., Rm. 104
Santa Fe, NM 87501 | 7. NMPD - Appellate Division
301 N. Guadalupe St., #101
Santa Fe, NM 87501 |
| 2. Curry County District Court
700 N. Main St., Ste. 11
Clovis, NM 88101 | 8. Albert Jose Ramirez #69597
c/o LCCF
6900 W. Millen Dr.
Hobbs NM 88244 |
| 3. Honorable Teddy L. Hartley
Curry County District Court
700 N. Main St., Ste. 11
Clovis, NM 88101 | |
| 4. Court Monitor
Curry County District Court
700 N. Main St., Ste. 11
Clovis, NM 88101 | |
| 5. District Attorney's Office
417 Gidding, Ste. 200
Clovis, NM 88101 | |
| 6. NM Attorney General
Criminal Appeals Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508 | |



Jesse R. Cosby

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN MY OFFICE

MAR 03 2014


Clerk District Court

STATE OF NEW MEXICO,

Plaintiff,

v.

No. CR-2007-434

ALBERT JOSE RAMIREZ,

Defendant.

**ORDER APPOINTING APPELLATE COUNSEL
AND GRANTING FREE PROCESS**

THIS MATTER having come before the Court on motion of the defense, the Court having considered the matter and good cause having been shown,

IT IS ORDERED that the New Mexico Public Defender's Office, Appellate Division, be, and hereby is, appointed as appellate counsel for the Defendant.

IT IS FURTHER ORDERED that the Defendant shall receive free process on his appeal.


DISTRICT JUDGE

Submitted:


Jesse R. Cosby
Attorney for Defendant

FEB/07/2014/FRI 03:05 PM jesse cosby atty.

FAX No. 5756250364

P. 002

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
FILED FEB 7 2014

2014 FEB -7 PM 1:43

Shelly Banger
CLERK OF DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v.

No. CR-2007-434

ALBERT JOSE RAMIREZ,

Defendant.

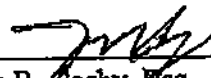
NOTICE OF APPEAL

The Defendant appeals to the New Mexico Supreme Court his conviction before the Honorable Teddy L. Hartley filed on January 8, 2014. A copy of the Judgment, Sentence, and Commitment upon which this appeal is based is attached as Exhibit A.

This Notice of Appeal is timely if filed on or before February 7, 2014.

The Defendant is indigent and will be represented by the New Mexico Public Defender Appellate Division. The Defendant will be filing an Order Appointing Appellate Counsel and Granting Free Process.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant-Appellant
P. O. Box 3330
Roswell NM 88202-3330
(575) 625-0516

FEB/07/2014/FRI 03:05 PM

jess cosby atty.

FAX No. 5756258664

P. 003

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing pleading was mailed to the following persons this ^{fourth} ~~7th~~ day of February, 2014, by depositing a copy of the same in the United States mail in a lawfully franked envelope addressed as follows, to wit:

1. NM Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
2. Honorable Teddy L. Hartley
700 N. Main St., Ste. 11
Clovis, NM 88101
3. Court Monitor
700 N. Main St., Ste. 11
Clovis, NM 88101
4. District Attorney's Office
417 Gidding, Ste. 200
Clovis, NM 88101
5. NM Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
6. NM Public Defender - Appellate Division
301 N. Guadalupe St., #101
Santa Fe, NM 87501
7. Ninth Judicial District Court
700 N. Main St., Ste. 11
Clovis, NM 88101
8. Albert Jose Ramirez #69597
c/o LCCF
6900 W. Millen
Hobbs, NM 88244



Jesse R. Cosby

FEB/07/2014/FRI 03:05 PM jess cosby atty.
01/08/2014 11:55 FAX

FAX No. 5756258864

P. 004

0002/0003

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2014 JAN -8 AM 11:12

STATE OF NEW MEXICO.

Plaintiff.

Shelly B. [Signature]
CLERK DISTRICT COURT

v.

ALBERT JOSE RAMIREZ,
DOB: [REDACTED]
SOC: [REDACTED]
STN: 050100070340

No. D-0905-CR-0200700434

Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER coming on for hearing on January 8, 2014, before the Honorable Teddy L. Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant appearing personally and by his attorney, Jesse R. Cosby, Attorney at Law, the Defendant having been convicted on October 11, 2013, pursuant to guilty verdicts by the jury accepted and recorded by the Court of the following crime(s):

Count 1: [0001], Murder in the first degree (willful & deliberate), contrary to §30-02-01(A)(1), NMSA 1978.

Count 2: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Count 3: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

EXHIBIT A

FEB/07/2014/FRI 03:05 PM
01/08/2014 11:55 FAX

jessie cosby atty.

FAX No. 5756258864

P.005

00003/0003

Defendant is hereby found and adjudged guilty and convicted of said crime(s), and is sentenced to be imprisoned by the Department of Corrections for the following terms:

As to Count 1, a term of life imprisonment.

As to Count 2, a term of three (3) years.

As to Count 3, a term of three (3) years.

Counts 1, 2, and 3, shall run consecutively, one after the other, for a total term of life imprisonment, plus six (6) years. *mental and physical health as available.*

Dept of Corrections shall provide mental and physical treatment as available for me
Upon completion of the term provided herein, the Defendant will be subject to release under parole supervision, subject to the statutory provisions relating to condition, supervision and return of parolees.

Therefore, You, the Sheriff of Curry County, are hereby commanded to take Defendant in custody and deliver Albert Jose Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive him and confine Albert Jose Ramirez for the above term.

Defendant shall receive credit for 2370 days (6 years, 5 months, 25 days) of pre-sentence confinement, from date of arrest on July 15, 2007, until date of sentencing, January 8, 2014, and for post-sentence confinement from January 9, 2014, until delivery to the Department of Corrections.

Teddy L. Hartley
TEDDY L. HARTLEY
DISTRICT JUDGE

HAVE SEEN:

Matthew Chandler
Matthew Chandler
District Attorney

Jesse B. Cosby
Jesse B. Cosby
Attorney for Defense

D.A. MC/jwg..

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

vs.

No. 34,576

ALBERT JOSE RAMIREZ,

Defendant-Appellant

DEFENDANT-APPELLANT'S BRIEF-IN-CHIEF

ON DIRECT APPEAL PURSUANT TO RULE 12-102 (A)(1) NMRA
TO THE NEW MEXICO SUPREME COURT

Jorge A. Alvarado
Chief Public Defender

Steven J. Forsberg
Assistant Appellate Defender
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SUPREME COURT OF NEW MEXICO
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EXHIBIT

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STATEMENT REGARDING RECORDED PROCEEDINGS

Citations to the Fifth Judicial District recordings of proceedings appear in the following form: (date, CD, time-time). Please note that both CDs in the record proper are marked “B.” Please note that references to the record proper are cited as (RP ____).

STATEMENT OF COMPLIANCE

As required by Rule 12-213(F)(3) NMRA, I certify that this brief is proportionally spaced using Times New Roman and the body of the brief contains 10,901 words (not to exceed 11,000 for a brief in chief). This brief was prepared using Microsoft Word, version 2002.

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I. NATURE OF THE CASE

Albert Ramirez was convicted of first-degree murder and two counts of tampering with evidence. [2 RP 685-88] The jury also found that a firearm was used in the commission of the murder. [2 RP 686] Mr. Ramirez was sentenced to life for the murder, and to three years for each of the two counts of tampering, all to run consecutively. [2 RP 711] Mr. Ramirez makes this direct appeal to the Supreme Court pursuant to NMR 12-102(A)(1) and Article VI, section 2 of the New Mexico Constitution. [2 RP 721]

This appeal is from Mr. Ramirez's second trial. Prior to the entry of a guilty plea during the first trial, Mr. Ramirez had been found not competent to stand trial and was sent to the New Mexico Behavioral Health Institute for treatment to competency. [1 RP 146] He was admitted at Las Vegas on June 5, 2008, and left there on August 19, 2008. At a hearing on September 15, 2008, the court ruled that Mr. Ramirez had become competent to stand trial. [1 RP 158] His first trial commenced on January 26, 2009. [1 RP 229] During voir dire a plea agreement was reached and a guilty plea was entered. [1 RP 294-5]

Mr. Ramirez subsequently attempted to withdraw his plea, and ultimately the Court ruled that it had not been made knowingly, intelligently, and voluntarily. *State v. Ramirez*, 2011-NMSC-025, 149 N.M. 698. The current appeal is from his retrial. After the remand another competency evaluation was given to Mr. Ramirez. Both parties stipulated to Mr. Ramirez's competency to stand trial. The order finding Mr. Ramirez competent cited a competency report dated January 17, 2013. **[2 RP 405]** On October 7, 2013, the retrial commenced with jury selection. **[2 RP 579]**

On July 12th, 2007, at about 1:30 p.m., Albert Ramirez shot and killed Eladio Robledo, his de facto stepfather. (Though Mr. Robledo had never married Albert's mother, he had lived with her for years while she raised her children, including Albert). Mr. Ramirez did not deny shooting and killing Mr. Robledo. The issue at trial was whether the killing was premeditated (as the State contended) or the result of provocation and done in the heat of the moment (as the defense argued).

Mr. Ramirez is a troubled young man and the trial judge noted his problems can make him a very trying client. **[10-10-2013 CD B 2:07-2:41]** Prior to his first trial he was found incompetent and ordered treated to competency. **[1 RP 146]** During his second trial there were repeated issues with his conduct, including an attempt to "fire" his attorney in front of the

jury. *For example see* [2 RP 649] Regardless of his problematic and at times self-destructive behavior he had a right to a fair trial, including a due process right to have his competency evaluated when his trial attorney raised the issue during the trial. Mr. Ramirez did not claim an insanity defense nor did he seek a “guilty but mentally ill” verdict. His counsel, however, requested a recess to have his competency for trial reevaluated in light of his problems and behavior during the trial. The judge refused.

Mr. Ramirez also raises ineffective assistance of counsel, improper commentary on his right to remain silent, the possibility that the jury saw his leg restraints, the improper introduction of other bad acts evidence, and the judge’s refusal to declare a mistrial due to prosecutorial misconduct. Mr. Ramirez explicitly abandons the double jeopardy issue raised in his docketing statement.

II. STATEMENT OF RELEVANT FACTS AND PROCEEDINGS

Albert Ramirez was charged with the murder of Mr. Robledo, occurring on or about July 12, 2007, in Clovis, New Mexico. [1 RP 1-2] Mr. Ramirez was also charged with two counts of tampering with evidence. *Id.*

PERTINENT PRETRIAL AND TRIAL TESTIMONY

The competency hearing on September 15, 2008

Dr. Joanne Burness, a clinical psychologist at NMBHI and employed by the State of New Mexico, testified. On direct examination she described Mr. Ramirez as “[s]o bizarre but not bizarre consistent with mentally ill, just histrionic, dramatic, very much blaming everybody else for his problems, not able to accept a role in his life and his presentation did not provide any of us across the team with any consistent belief that we had a mentally ill person on hand.” She then said, “He is a disturbed young man, but in my opinion he is not mentally ill.” [9-15-2008 CD A 2:05:00-2:06:35] When asked by the prosecutor for her “diagnostic impression” she testified that she concluded malingering and mood disorder not otherwise specified and “obviously personality disorder.” [Id. 2:06:40 – 2:07:09] There was no testimony clarifying whether this was merely an “impression” or some more formal or authoritative opinion. When asked if Mr. Ramirez could “handle the stress of testifying,” Dr. Burness replied “I think so.” [Id. 2:32:28 – 2:34:00]

Trial testimony

The first witness

Sam Saiz, Jr. was a neighbor of the victim, Eladio Robledo. He testified that he knew Albert Ramirez by sight and identified him in the courtroom. He was working in the backyard of his house, which was across

the street from Mr. Robledo's house, when he heard firecrackers or shots. When he came running from the backyard he saw Albert Ramirez lean over Eladio and shoot him twice in the head. He described what Albert was wearing. He testified that he did not see a gun, but he testified that Albert's hands were out while Eladio lay on the ground. Mr. Saiz then testified that he went into his house and called the police. **[10-07-13 CD B 2:28:03-2:38:09]** He testified that he saw Debra Ramirez come out of her house (or Robledo's house, they lived there together). Mr. Saiz testified that Albert Ramirez left the scene. Shortly thereafter police and an ambulance arrived. **[10-07-13 CD B 2:38:09-2:46:04]**

Following the testimony a recess was called and the jury was excused from the courtroom. There was a discussion of the restraints on Mr. Ramirez's legs. Mr. Ramirez told the court that he thought that the jury might have seen his leg restraints when he stumbled as he got up. The judge ordered that the restraints be removed so there would be no further issues. The prosecution offered for the record that the table Mr. Ramirez was sitting at was draped to the floor with a black skirt and no one could see his feet or legs. The defense counsel agreed, and the judge stated that "I'm sitting right here and I can't see it" but that the restraints would be removed in order not to cause a problem. **[10-07-13 CD B 3:12:42-3:14:40]**

The second witness

The second witness was Grace Finkey. She was driving by when something caught her eye. She testified that she saw an older man running and a younger man running after him. She testified that the older man had fallen down and the younger man had his arm extended when she heard two pops. She looked back and saw the older man on the ground. She called 911 because she was concerned. [10-07-13 CD B 3:41:33-3:51:08]

Witnesses three through eight.

The next several witnesses were police officers or civilians testifying about investigating the crime and events that happened before and after the crime.

Witness nine.

During the testimony of Deputy Sandy Loomis, witness number nine, the following exchange took place between him and the prosecutor:

Deputy: "On the 15th of July I was called in to assist Lt. Grau on some follow up investigation to this case."

Prosecutor: "And what was the purpose of the follow up investigation?"

Deputy: "We, uh, I had been told that Mr. Ramirez had been arrested and I tried to interview him and then did a search of a house where he had been staying."

The defense counsel approached the bench and asked to make a motion outside the presence of the jury. [10-08-2013 CD B 2:11:40-2:13:15]

The defense moved for a mistrial based on the deputy's comment on Mr. Ramirez's silence. The defense argued that the only conclusion the jury could reach from the deputy's statement was that Mr. Ramirez had invoked his right to remain silent.

The prosecution argued that there had been no error, or that if there had been it could be cured by a jury instruction if the defense requested one.

The court stated that the question was not suggesting an impermissible answer and the deputy just gave a routine answer that did not rise to the level of being a comment on Mr. Ramirez's silence.

The prosecution argued that the comment did not necessarily lead to a conclusion about Mr. Ramirez's invocation of his rights. The prosecution also argued that even if it did, the proper remedy was a curative instruction and not a mistrial.

The court ruled that the comments by the deputy were a routine recitation of his action and not intended to be a comment on Mr. Ramirez's silence, but that he would give a curative instruction if the defense requested one.

Witness ten.

Witness number ten was Rafael Aguilar. He was employed by the Clovis Police Department. On April 22, 2007 he had made contact with Alberto Ramirez. The officer was responding to a call [10-08-13 CD B 3:52:20-3:53:57] and Alberto Ramirez and Mr. Robledo were present. The officer testified that he issued Mr. Ramirez a criminal trespass notice for the residence. The prosecution offered the notice as State's exhibit 87. [the tape log in the Record Proper incorrectly identifies it as exhibit 85] [10-08-13 CD B 3:53:57-3:55:34]

The defense objected that this was uncharged conduct and violated "404." The prosecution argued that it went to motive. The judge admitted it. [10-08-13 CD B 3:55:34-3:55:53] The officer testified that he gave copies to Mr. Ramirez and Mr. Robledo. The officer did not recall if Mr. Ramirez said anything. He testified that Mr. Ramirez left the residence.

On cross examination the officer testified that he did not recall who owned the residence. The officer testified that Mr. Robledo said he lived there, but the officer did not know if he owned it. The officer testified that he never checked, and testified that a person who resides at a residence can issue a trespass notice. The defense showed the officer a Plateau Wireless document. [10-08-13 CD B 3:55:53-3:58:12] The officer testified that

Alberto Ramirez had an account authorization on August 21, 2006. The officer testified that he did not know whether Mr. Ramirez's personal effects were in the house on the day of the shooting. The officer testified that at the time of the trespass notice he did not think Mr. Ramirez had established residence at the house. The officer admitted that he didn't know if Mr. Ramirez lived there at the time. **[10-08-13 CD B 3:58:12-4:02:43]**

On re-direct examination the State told the witness that "[s]ince defense counsel asked and opened the door," he was going to ask what Debra's position was. The defense objected that it had not "opened the door," and the judge agreed that the defense "hadn't said anything about the Mom at all." The prosecution asked "Did he [presumably Mr. Robledo] say anything about Debra, without saying what she said..." and the defense renewed its objection. The judge permitted the question. The prosecution asked if anything was said about Debra or her position. The officer testified that she did not want him (presumably Alberto) at the house. The officer agreed that Mr. Ramirez was eighteen years old and testified that in New Mexico a person becomes an adult at eighteen. The officer testified that he did not recall Mr. Ramirez saying he lived at the residence. **[10-08-13 CD B 4:02:43-4:04:02]**

Witness eleven.

Witness number eleven was Officer Daryl Rice, a detective for the city of Clovis. He testified that on May 31, 2007, he came into contact with Alberto Ramirez. The officer was responding to a call about a broken windshield. [10-08-13 CD B 4:04:45-4:05:55] After the detective refreshed his memory with his report he testified that Debra Ramirez (Alberto's mother) reported that her son Alberto had broken the windshield of a car. The defense objected that this was "uncharged conduct" that had happened in May (which was well before the murder took place) and asked for a continuing objection. The prosecutor argued that he was "showing a pattern of conduct" and the judge permitted him to continue the questioning. [10-08-13 CD B 4:05:55-4:06:59]

The officer testified that the car had actually belonged to her boyfriend. The officer took a report and drove around trying to find Alberto. He later got an estimate for repairs from Glass Doctor. The officer got a call that Alberto had been located and went to speak with him. The officer testified that when he asked Albert what had happened to the windshield Albert had said, "I got mad." [10-08-13 CD B 4:06:59-4:08-33]

On cross-examination the officer testified that Alberto was on crutches on that date. The officer did not know what the dispute was over. The officer testified that the mother said Alberto had slammed the window

with his crutches and then went off. The officer took the report and the estimate for damage. The officer testified that he filed charges after he got the estimate. **[10-08-13 CD B 4:08:33-4:11:18]**

Witness twelve.

Witness number twelve was Johnny Zamora. He testified that had been a police officer in Clovis, New Mexico. On June 19th, 2013, he was working as a police officer in Clovis. On that date he responded to a call about criminal damage. He testified that he made contact with Debra Ramirez. The officer noticed a broken window and asked Ms. Ramirez what had happened. He wrote a report on the incident. **[10-08-13 CD B 4:14:35-4:17:15]** The prosecutor asked, "Did you ever find out whoever did it?" Mr. Zamora replied, "When I spoke with her she said...", and the defense objected on confrontation and hearsay grounds. The judge sustained the objection. Mr. Zamora testified that no one else was there that day and that he had no further involvement with the case. **[10-08-13 CD B 4:17:15-4:17:40]**

Witness fourteen.

Witness number fourteen was Dr. Ross Reicherd, a medical examiner for the State of New Mexico. **[10-09-13 CD B 8:39:43-8:43:57]** The doctor testified that Mr. Robledo died from multiple gunshot wounds and that the

manner of death was homicide. [10-09-13 CD B 9:24:40-9:25:08] Further witnesses, police officers and civilians, were called by the State to testify about the investigation or events prior to or after the shooting.

The motions for reevaluation of competency to stand trial.

During the State's case in chief (outside the presence of the jury), Mr. Ramirez's trial counsel made a motion to the court for a recess in order to permit Mr. Ramirez's competency to be reevaluated. [10-09-13 CD B 10:16:00] Defense counsel informed the court that he had attempted to speak with Mr. Ramirez and that Mr. Ramirez had stated he didn't understand the proceedings. Counsel indicated to the judge that Mr. Ramirez was not capable of assisting his attorney. Counsel pointed out the prior finding of incompetency. He reminded the court that Mr. Ramirez had been treated to competency and noted there had been concerns about malingering. Counsel pointed out that Mr. Ramirez had been advised to stay on medications, but counsel did not know if Mr. Ramirez had been receiving medication.

Defense counsel summarized "Right now I can't function as his counsel without his ability to cooperate, communicate, participate and I don't know whether it's malingering or not and I'm not the psychiatrist."

[10-09-13 CD B 10:17:00] Counsel moved the court for an immediate

reevaluation to see if Mr. Ramirez was receiving his medications and if he had “fallen back” into an area where he was no longer competent. Defense counsel related that he had heard testimony in other cases about marginally competent people “decompensating” and becoming incompetent, particularly when not getting medication or adequate care. Defense counsel stated that in his opinion Mr. Ramirez had decompensated and needed reevaluation.

The prosecution objected to a recess. The prosecution argued that there was no “good faith basis” to doubt Mr. Ramirez’s competency. The prosecution told the court “he has not been found incompetent, ever.” [This is contrary to the written record in this case. On April 17, 2008, Mr. Ramirez had been found incompetent by examiner Maxann Shwartz, and the prosecution and defense stipulated to his incompetence and dangerousness and agreed that he should be sent to Las Vegas to be treated to competency.]

[RP 146] The prosecution argued that Mr. Ramirez had been sent to Las Vegas because he wouldn’t participate, and further argued that “the report came back” saying that Mr. Ramirez was malingering and was “a fake.”¹

[10-09-13 CD B 10:18:36-10:19:04] The prosecution argued that Mr. Ramirez had complained of being sick that morning, and that a nurse had

¹ This appeal will argue that this was mischaracterization of the testimony given at the hearing.

seen him and said that he was fine. [*Id.* 10:19:00] The prosecution argued that the court had received reports from a psychiatrist that Mr. Ramirez was feigning his mental illness and that there was “no diagnosis.” The prosecution reiterated its objection that there was no “good faith basis” pursuant to the rule to allow a reevaluation. [*Id.* 10:19:57]

The defense pointed out the earlier professional opinion of Maxann Shwartz that Mr. Ramirez had not been competent to stand trial on that earlier date.

The judge stated “The file is long, he’s been evaluated, and there is significant information in there that suggests he is a malingerer,” and “I hesitate to stop the trial at this juncture.” The judge asked the State how many witnesses it planned on calling. The judge stated that at Mr. Ramirez’s original plea (the one overturned by this Court) he had been crying. The judge said “If the big court wants this case tried again that’ll be fine, but I’m not quitting it today.” [*Id.* 10:19:57-10:24:04]

Mr. Ramirez interrupted and defense counsel informed the judge “I can’t stop him.” Mr. Ramirez told the court “I was at the hospital I was participating and a guy threw coffee in my face and started punching me and gave me a black eye. And a patient gave me a number to call a lawyer and I called them and after that they shipped me over here and after that I was

crying because I was chronically depressed because I'm physically disabled from my neck down..."

Mr. Ramirez continued in a run-on statement that he had been diagnosed as schizophrenic and heard voices sometimes and that he suffered from a physical illness called "psychosomatic delusions" because he thought that he suffered from a "terrible physical illness" and that he was disabled from the neck down, his left leg was shorter than his right leg, and so on. As he burst into tears, Mr. Ramirez said "I think Mr. Cosby [defense counsel] gets mad at me because I don't know how to talk to him and I'm scared that..." [*Id.* 10:24:04- 10:25:58] The judge told Mr. Ramirez that Mr. Cosby was not mad at him.

The prosecution pointed out case law would allow Mr. Ramirez to view the proceedings from another room via video if he disrupted the trial. The defense argued that removal was only appropriate for defendants who were acting willfully. Defense counsel pointed out that Mr. Ramirez was "obviously" going to continue to cry, to not be communicative, and not be able to assist his attorney. Defense counsel stated that he felt that Mr. Ramirez's behavior was possibly from something other than malingering. Defense counsel stated that Mr. Ramirez was "fixated" on his perceived medical problem of having one leg shorter than the other. The defense

argued that these things were not to establish a defense but rather were indicative of a medical mental health problem, and that if Mr. Ramirez could not get past his problems he could not assist the defense. [*Id.* 10:25:58]

Later that day, defense counsel renewed his motion for a recess to get Mr. Ramirez reevaluated. In particular, defense counsel was concerned that Mr. Ramirez was not competent to make the choice of whether or not to testify. Mr. Ramirez told the court that he wanted the jury to be told about his medical problems. He told the court that he felt that everyone was against him. [10-09-13 CD B 2:36:02- 2:45:40]

The court read from the file in the case. The judge read that Mr. Ramirez had been found “currently” incompetent by Dr. Shwartzat one time, but subsequently found competent by NMBHI. The judge stated that Dr. Burness testified at the competency hearing that her opinion was that Mr. Ramirez “was faking his symptoms” and was competent for trial. The judge stated that the opinion of Dr. Burness “that the defendant is faking continues.” The judge ruled that he would not grant a recess. [10-09-13 CD B 3:08:40-3:13:45]

Mr. Ramirez’s initial statement to the court on October 10.

Defense counsel informed the court that Mr. Ramirez wanted to address the court, and defense counsel didn’t know about what Mr. Ramirez

told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Schwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything...." Mr. Ramirez continued,

“Mr. Cosby is my attorney and he’s supposed to be for my defense but like I’ve said in the past I’ve asked to fire him, I’ve asked to get a new attorney which I can’t afford it I’m poor, I have no help from my family just basically to get my hygiene and also I asked for a new attorney, I asked for a private investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I’ve asked for several motions which I don’t know if they were even filed or if they were denied, I don’t know if Mr. Cosby, I just feel like maybe I have a big mouth and I sit to open my big mouth and say things and I don’t know if I made him angry or upset or frustrated or what I’ve done but for some reason I don’t know if he’s going to lose this case because it’s a weak case or if it’s intentionally or accidental or if I’m just paranoid...”

The judge interrupted and told Mr. Ramirez that he had made his record. Mr. Ramirez told the judge that he had more things to say, but thanked the judge for giving him that time. [10-10-2013 CD B 9:22:00-9:26:00]

Testimony of Albert Ramirez

Mr. Ramirez took the stand. His entire testimony was punctuated with run-on and irrelevant statements as well as admonitions from his counsel and the judge. He repeatedly kept raising issues of his health and health history. He stated that he had the flu and didn’t feel well. When asked about his height he talked about getting into an accident while driving a car and starting to lift weights, and he was taller in 2007. Shortly thereafter, when defense counsel tried to get Mr. Ramirez to answer who his mother was, Mr. Ramirez objected, “You didn’t let me finish where I stayed in July.” Mr.

Ramirez described various places he stayed. When asked why he didn't have a place to stay he said, "I was in an accident and they messed up my teeth and I was driving a standard Honda and I was kicked out of my Mom's house but if I could explain to you later why that happened...."

When defense counsel tried to keep him on the subject Mr. Ramirez objected,

"Can you hold that question because you just asked me a question before that and you said 'How come I was living at these places' and I want to explain to them this is why because I got kicked out and I was looking for a job but I was unable to find a job so I went to a friend who introduced me to another friend that sold marijuana and he gave me marijuana and I was getting a check from my dad for going to high school, five hundred a month, so I was living in my car, and I ended up getting hurt, and later on how I got to be homeless was because I was unable to work, and I was unable to walk, and I was unable to drive, and I could only walk on crutches so I was unable to support myself financially...."

Mr. Ramirez continued that "Everybody said that they tried to help me but I don't see people helping you when they only let you stay at their house for two weeks and make you leave..." and so on. When defense counsel finally interrupted Mr. Ramirez said "I'm having a hard time thinking I'm sorry to you, jury; I'm sorry to everybody in the courtroom." [10-10-2013 CD B 9:31:40-9:39:25]

Mr. Ramirez often answered in a rambling manner and repeatedly objected that he had more to say or that he was not being allowed to say what he wanted to say. Eventually the judge intervened, telling Mr. Ramirez that “to the extent that you’re able you answer the questions direct” and that Mr. Ramirez needed to answer the questions as directly as possible. Mr. Ramirez asked the judge “Can I say something to you, sir?” and the judge said yes. Mr. Ramirez stated, “I feel like Mr. Cosby’s knowledge is that he’s very smart and intelligent as everybody else in this courtroom but I also feel that he’s not going to ask questions that when he asks and that when I answer which answer other questions that...” The prosecution objected to the exchange with the judge in front of the jury and the judge replied that he understood. Mr. Ramirez said “I don’t know what’s going on in courtrooms, this is my first jury trial...” The judge interrupted and told him to answer the questions he was asked. Mr. Ramirez asked “Who can I ask if there’s questions that I have personally that I want to let the jury know?” The judge told Mr. Ramirez that he had to answer the questions asked and said “I don’t want to hear any more about it.” Mr. Ramirez insisted “That’s not fair to me...” Defense counsel interrupted and tried to get Mr. Ramirez back on track. [10-10-13 CD B 9:48:00-9:49:40]

Later, during cross-examination the prosecution asked, "It's nothing for you to be involved in altercations, is it?" Mr. Ramirez stated that he did not understand the "big words" and the prosecution asked if he had ever punched a girl in the face. Mr. Ramirez responded that he had once when his cousin was getting beat up. The prosecution asked to approach the bench. At the bench the prosecution stated that it intended to impeach Mr. Ramirez with a prior conviction for battery on a peace officer. The defense responded that it was being offered not for impeachment under 609 but the prosecution had said it was offering it under 404 as prior conduct and that the prosecution as not being consistent with its own offer. The judge ruled that his earlier ruling was that it was not proper but said that the prosecution could ask Mr. Ramirez and see what he says. **[10-10-13 CD B 1:54:30-1:56:15]**

The prosecution asked "Isn't it true that you have also head-butted a police officer?" And Mr. Ramirez answered "Yes." The defense renewed its objection. The prosecution asked Mr. Ramirez if he wanted the jury to believe that Mr. Robledo had assaulted him. The prosecution shortly thereafter asked, "And you've done significant amount of legal research on how to get the jury to buy this?" The defense objected and moved for a mistrial. Mr. Ramirez complained that "I'm not as educated as you all..."

The judge interrupted and asked the prosecution to lay a foundation. The prosecution asked Mr. Ramirez “Do you recall giving a lot of requests to go to the law library to research how to beat your charges?” The defense objected and asked to approach. The judge directed the prosecution not to ask those questions but said that he would not declare a mistrial. **[10-10-13 CD B 1:56:15-1:58:25]**

Later on October 10th, when Mr. Ramirez’s defense counsel was finished questioning Mr. Ramirez’s brother on direct examination, Mr. Ramirez interrupted the proceedings:

Mr. Ramirez: “Hey, your Honor, I got some questions I need to ask him.”

Judge: “But you can’t ask them.”

Mr. Ramirez: “Why didn’t you ask... I want to fire...”

Judge: “We’re going to sit you in the other room if I hear anything more from you.”

Mr. Ramirez: (speaking over the judge) “I fire him. He’s fired. I want to represent myself... I have the right to fire him and represent myself! He’s not representing me right!”

The Judge ordered Mr. Ramirez from the courtroom and excused the jury. **[10-10-2013 CD B 2:09:45-2:10:30]** Following the recess defense counsel spoke with Mr. Ramirez and the trial resumed with Mr. Ramirez present.

III. ARGUMENT

A. THE DISTRICT COURT ERRED WHEN IT DENIED MR. RAMIREZ A REEVALUATION OF HIS COMPETENCY TO STAND TRIAL.

Mr. Ramirez argues that the correct standard of review is de novo.

The Court of Appeals normally reviews a denial of a motion for a competency evaluation for an abuse of discretion. *State v. Flores*, 2005-NMCA-135, ¶20, 138 N.M. 636 (citations omitted). This court (the Supreme Court) appears to have adopted that standard in a recent non-precedential opinion. *See State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential)

However, “[I]t is a violation of due process to prosecute a defendant who is incompetent to stand trial.” *State v. Rotherham*, 1996-NMSC-048, ¶13, 122 N.M. 246. The Court of Appeals has used a de novo standard in cases like Mr. Ramirez’s. “Rather, the questions raised by Defendant on appeal involve his right to raise the issue of competency and the proper process to be afforded him once that issue has been raised. These are matters of due process that we review de novo.” *State v. Montoya*, 2010-NMCA-067, ¶¶ 10-11, 148 N.M. 495. Mr. Ramirez is appealing “the proper process to be afforded him once that issue has been raised,” and thus the de novo standard should be applied. *Id.*

1. When psychologists disagree: Mental illness v. personality disorder.

The courts rely heavily on the opinions of psychologists to help determine the status of individuals in the criminal justice system. Psychologists, however, often disagree not only over individual cases but also over broader issues in the field of psychology itself. Mr. Ramirez provides a case study in just such a disagreement amongst psychologists, and how such disagreements can have dire consequences when attorneys and judges, not schooled in the finer distinctions of the field of psychology, make judgments about criminal defendants. Fortunately this Court does not have to resolve the schism among psychologists over whether the definition of “mental illness” encompasses “personality disorders.” That question is moot because having a mental illness is not a prerequisite for being found incompetent. It may be helpful to the Court, however, to show that there is a fundamental disagreement amongst various schools of psychologists and how that disagreement has influenced Mr. Ramirez’s treatment by the courts and doctors.

During the competency hearing on September 15, 2008, Dr. Joanne Burness testified for the State about Mr. Ramirez. She stated that Mr.

Ramirez was not mentally ill. However, she then went on to say that he had been prescribed medications and “obviously” had a personality disorder. To Dr. Burness, “mental illness” was apparently distinct from “personality disorder.” Yet this conclusion, unexamined at the hearing, is a matter of disagreement in the field of psychology. For many psychologists would say that a “personality disorder” *is* a “mental illness.”

Dr. Burness testified that she received much of her education in the United Kingdom, so literature from the UK regarding this issue might be particularly enlightening. In an article in the British Journal of Psychiatry the author addressed the disagreement over terminology and reached the conclusion that “The historical reasons for regarding personality disorders as fundamentally different from mental illnesses are being undermined by both clinical and genetic evidence.” R.E. Kedell, FRSE, “The distinction between personality disorder and mental illness,” The British Journal of Psychiatry (2002) 180:110-115, online at <http://bjp.rcpsych.org/content/180/2/110.full> , last viewed June 26, 2014.

Other authorities in the United States have more explicitly adopted the view that “Personality disorders are a group of mental illnesses.” MedLine Plus (a service of the National Library of Medicine, National Institute of Health), online at

<http://www.nlm.nih.gov/medlineplus/personalitydisorders.html>, last viewed June 26, 2014. As that source goes on to explain, “The symptoms of each personality disorder are different. They can be mild or severe. People with personality disorders may have trouble realizing that they have a problem. To them, their thoughts are normal, and they often blame others for their problems.” *Id.*

Even though Dr. Burness did not specify what type of personality disorder Mr. Ramirez might have had, she used the adjective “histrionic.” It may be informative to quote a text that dealt specifically with the issue of “deceit” by those with histrionic personality disorder:

“[those with histrionic personality disorder] are constantly seeking attention by their dress or dramatic mannerisms. They are emotional rather than intellectual and, often in a childish manner, expect others to care for them. They often report details about their lives, including medical histories, in a dramatic, imprecise manner with more attention to performance than to accuracy. For example, instead of saying that she had a simple appendectomy, Cindy would dramatically tell how she was saved just in the nick of time before her appendix ruptured.”

“Persons with histrionic personalities are renowned for their skills in lying, but their prevarication does not usually have the malignant quality that is evident in the lying of persons with antisocial personality. More frequently, it is to create dramatic effect, to avoid unpleasantness, or to get people to like them (the ingratiating lie). However, their deceit ultimately takes its toll. The superficiality of these people, their lack of

genuine feelings beneath the surface storm of emotion, and the anger engendered in others from being repeatedly deceived (even in minor ways) drive other people away and makes true intimacy difficult, if not impossible.

Charles V. Ford, M.D., "Lies! Lies!! Lies!!! : The psychology of deceit," p. 115, American Psychiatric Press, 1999 (first ed.) (ISBN 0-88048-997-9)

The State's doctor testified that Mr. Ramirez was malingering, but she also testified that he suffered from a personality disorder that, based on her description, might have led Mr. Ramirez to exaggerate or create symptoms even *without* an intention to lie for some gain. This leads to a situation where a person might be *both* thought of as malingering *and* suffering from a problem that causes incompetency. Even an incompetent person can mangle, and distinguishing "malingering" from "psychiatric disorders" is a problematic task for even trained psychologists. Michael Sharpe, Ch. 12 "Distinguishing malingering from psychiatric disorders," p. 156, in "Malingering and illness deception", Oxford University Press, 2003, found online at:
http://www.meactionuk.org.uk/Malingering_and_Illness_Deception.pdf,
last viewed June 26, 2014.

The long and short of it is that the prosecutor's characterization of Mr. Ramirez as a "fake" (a term the doctor did not use) is simplistic and

misleading. The judge's adoption of this viewpoint was similarly mistaken. Mr. Ramirez was not "faking" his personality disorder or mood disorder, according to the doctor. The fact that the doctor did not categorize his personality disorder as a "mental illness" did not necessarily mean that he was healthy and could not be incompetent. This is true even if there was malingering *in addition to* the personality disorder.

Fortunately, this Court does not have to resolve this controversy in the psychological community. Nor does it have to (even if it could) diagnose Mr. Ramirez and parse the differences between unwillful illness and willful lying. This Court must simply decide if there was "minimal or no evidence of incompetency." *Flores*, 2005-NMCA-135, ¶20. There was ample evidence of incompetence, as discussed elsewhere in this brief.

What this Court should *not* do is merely attach itself to the term "malingering" and thus decide that Mr. Ramirez was not worthy of or in need of a reevaluation of his competency. Even someone who has been categorized as a malingerer (rightly or wrongly) can also suffer from a mental illness or personality disorder that renders him incompetent. The test for competency does not question *why* a person is incompetent, only *whether* he is incompetent, thus the question of whether Mr. Ramirez had a "mental illness" is moot. Mental illness is not a prerequisite for incompetence. For

example, someone in a coma from a blow to the head can be incompetent, or someone with a personality disorder. Thus, just because Mr. Ramirez was not categorized as having a “mental illness” by the State’s doctor, it does not follow that he was necessarily “faking” all of his symptoms.

2. Legal argument regarding the denial of reevaluation

A failure to make a determination of competency when reasonable grounds appear constitutes fundamental constitutional error. *Pate v. Robinson*, 383 U.S. 375, 385 (1966). The issue may not be waived by the defendant. *See* committee commentary to Rule 5-602. “But it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.” *Pate v. Robinson*, 383 U.S. 375, 384.

No competency hearing is required when there is minimal or no evidence of incompetency. *Flores*, 2005-NMCA-135, ¶20 (citation omitted). In this case there was a large amount of evidence pointing to incompetency. A person is competent if he: (1) Understands the nature and significance of the criminal proceedings against him, (2) has a factual understanding of the criminal charges, and (3) is able to assist his attorney in his defense. NMRA UJI 14-5104. In particular, Mr. Ramirez was not able to assist his attorney.

To begin with, Mr. Ramirez had previously been found incompetent and sent to Las Vegas for treatment to competency. When later treated to competency, the State's doctor testified that Mr. Ramirez had a personality disorder and a mood disorder. Additionally, during trial there were repeated manifestations of possible incompetency. Mr. Ramirez made "statements" that resulted in different transport officers being assigned to him during the trial. [10-08-13 CD B 8:42:10-8:43:50] He complained of physical illness and the court directed a nurse to check his physical health. [10-09-13 CD B 8:30:22-8:33:13] His defense counsel raised competency and requested a recess to have Mr. Ramirez reevaluated. Defense counsel's assertion of the incompetency of his client "is unquestionably a factor which should be considered." *Flores*, 2005-NMCA-135, ¶ 20, citing *Drope v. Missouri*, 420 U.S. 162, 178 n. 13. Mr. Ramirez made a rambling statement about his health and voiced concerns that his defense counsel was "mad at him." [10-09-13 CD B 10:13:29-10:26:30]

When defense counsel later renewed his motion for a recess to permit reevaluation, Mr. Ramirez asked to have the jury told about his "medical problems." [10-09-13 CD B 2:36:02-3:11:09] Following the testimony of Mr. Ramirez's brother the judge ordered Mr. Ramirez removed from the courtroom and had to recess the jury while the judge and the attorneys had to

deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13,122 N.M. 246. “Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury.” *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. **[10-10-13 CD B 2:07:30-2:41:36]**

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was “not fair” because he wasn’t being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. **[10-10-13 CD B 10:40:41-10:58:56]** The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. **[10-10-13 CD B 3:45:47-3:46:20]**

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. “The issue of a defendant’s competency to stand trial may be raised by motion, or upon the court’s own motion, at any stage of the proceedings.”

Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury “shall be instructed on the issue.” In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel’s assertion. “[E]vidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required...” *Drope*, 420 U.S. 162, 180. “Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.” *Id.* at 181.

Mr. Ramirez’s case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

The defense counsel in *Solomon* also did not provide any supporting evidence that his client was incompetent.

Additionally, the defendant in that case spoke to the court himself and asserted that he was competent and also refused to take part in any evaluation. Mr. Ramirez's attorney, on the other hand, made a repeated motion for evaluation and indicated that Mr. Ramirez did not understand and stated that Mr. Ramirez was incapable of assisting the defense. Trial counsel also reminded the court of the previous finding of incompetency, while emphasizing that he himself was not a qualified mental health expert. [10-09-13 CD B 10:16:00-10:17:00] Mr. Ramirez's own conduct and statements provided further evidence that an evaluation was needed.

It should be noted that the order finding Mr. Ramirez competent for retrial cited a doctor's report of January 17, 2013, and the actual examination of Mr. Ramirez may have taken place before that. [2 RP 405] The retrial did not commence until October 7, 2013. [2 RP 579] Thus, there was an interval of at least eight months and twenty days between his last evaluation and the trial date. In *Flores* the court said that "We note that such a substantial interval between assessment and trial may well justify a motion for further evaluation..." *Flores*, 2005-NMCA-135, ¶ 32. As Mr. Ramirez's trial counsel noted, clients can "decompensate" and become worse after an

evaluation, particularly when they are relocated to a jail and may not be receiving treatment or medications.

While the length of the interval was longer in *Flores* (two years), eight months is also a very substantial amount of time during which a person's mental state can change drastically. This is particularly true when people are moved from a specialized facility (NMBHI) to a local jail. "Clearly, the NMMIC [New Mexico mental illness and competency code] contemplates the primacy of the expert's opinion and *makes that opinion time-sensitive* for the district court to determine competency." *State v. Castillo*, No. 31,054, ¶ 10 (N.M. App. Aug. 28, 2013) (non-precedential) (emphasis added). The district court's reliance on an evaluation that was at least eight months old was misplaced. Shorter time intervals have been used by trial courts in ruling *against* defendants. "In its findings and conclusions, the district court emphasized that [the doctor's] diagnosis and evaluation were relevant only to Defendant's state at the time of evaluation, not the competency hearing held two months later." *Id.*, ¶ 7.

In addition, the court in *Flores* noted that the defendant there "was treated to competency in only three months." *Id.* Mr. Ramirez spent even less time being treated to competency. A possible reason for this short stay at NMBHI can be found in the professional literature. A professional journal

relates that “for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders...” and that “[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder.” Peter Tyrer, Ruger Mulder, et al, “Personality disorder: a new global perspective,” *World Psychiatry*, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/> .

The two cases, *Flores* and Mr. Ramirez’s, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez’s need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

B. Mr. Ramirez Received Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, guarantees defendants in criminal proceedings the right to effective assistance of counsel. *Patterson v. LeMaster*, 2001–NMSC–013, ¶ 16, 130 N.M. 179. New Mexico analyzes ineffective assistance of counsel claims under the two part test established in *Strickland v. Washington*, 466 U.S. 668 (1984). To establish the claim of ineffective assistance of counsel, a defendant must show error on the part of counsel and prejudice resulting from that error. *State v. Grogan*, 2007–NMSC–039, ¶ 11, 142 N.M. 107.

Mr. Ramirez’s trial counsel was attempting to deal with a difficult situation, but in the end he was unable to be effective because he lacked the necessary assistance of Mr. Ramirez himself: “Right now I can’t function as his counsel without his ability to cooperate, communicate, participate and I don’t know whether it’s malingering or not and I’m not the psychiatrist.”

[10-9-13 CD B 10:17:00] Defense counsel also stated that if Mr. Ramirez could not get past his problems he could not assist the defense. **[10-9-13 CD B 10:25:58]**

Furthermore, defense counsel made no attempt to have Mr. Ramirez evaluated after the judge denied him a recess for that purpose. Regardless of

the judge's decision not to grant a recess, the trial attorney had a duty to investigate his client's competence since he had raised it, even if it required action after court hours. Defense counsel failed to "seek the assistance of necessary experts," and if more money was required to seek such assistance on an urgent basis counsel should have requested it. *See State v. Schoonmaker*, 2008-NMSC-010, ¶ 31, 143 N.M. 373 (the basis of an ineffective assistance of counsel argument was the defense counsel's failure to seek funds to obtain an expert).

Mr. Ramirez was prejudiced by the failure of his trial counsel to obtain a reevaluation. "Thus it is the court's view that when the claim is made that the basis of the ineffective assistance claim is counsel's failure to investigate competency the establishment of such a claim incorporates a finding that the second prong of prejudice has been established." *Moye v. Warden*, No. CV98412103S at *5 (Conn. Super. March 27, 2014) (non-precedential).

Defense counsel also attempted to withdraw the motions to have Mr. Ramirez reevaluated for competency. By doing so, he attempted to effectively waive Mr. Ramirez's right to be competent for trial. Such a waiver cannot be made. *See* committee commentary to Rule 5-602; *Pate v. Robinson*, 383 U.S. 375, 384. Defense counsel was apparently trying to

forestall testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. **[RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]**

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question

of whether there has been an improper comment on a defendant's silence is reviewed de novo. *State v. Pacheco*, 2007-NMCA-140, ¶ 8, 142 N.M. 773.

During direct testimony Deputy Loomis testified that Mr. Ramirez had been arrested when the deputy "attempted" to get a statement from him. [10-08-2013 CD B 2:11:40-2:13:15] This would lead the jury to infer that Mr. Ramirez had utilized his Fifth Amendment right to not incriminate himself.

Prosecutorial comment on the post- *Miranda* exercise of the Fifth Amendment right to remain silent is protected against by the Fourteenth Amendment's Due Process Clause. See *State v. DeGraff*, 2006- NMSC-011, ¶ 12, 139 N.M. 211. A prosecutor is not permitted to elicit statements from a witness that the defendant invoked his right to remain silent. *State v. Foster*, 1998-NMCA-163, ¶ 11, 126 N.M. 177. But see *State v. Baca*, 1976- NMSC-015, ¶ 5, 89 N.M. 204 (holding that reversal was not warranted when a detective made an isolated, unsolicited comment referring to the defendant's post- *Miranda* refusal to speak with the police); *State v. Wildgrube*, 2003-NMCA-108, ¶¶ 23-24, 134 N.M. 262 (holding that when a police officer made an unsolicited comment regarding the defendant's post- *Miranda* silence and the prosecutor did not exploit the reference by asking

related questions or referring to it in closing argument, there was no prosecutorial misconduct requiring reversal).

D. Mr. Ramirez was prejudiced by the jury seeing his leg restraints

During the trial, Mr. Ramirez stumbled when he stood up as the jury was recessing. This was due to his legs being restrained. Mr. Ramirez told the court he thought the jury saw his restraints. The prosecution noted for the record that the table had a black skirt down to the floor so that no one could see Mr. Ramirez's feet or legs, and defense counsel and the judge agreed. In order to forestall further problems, the judge ordered the restraints removed.

[10-07-13 CD B 3:12:42-3:14:40]

The court reviews this issue for fundamental error. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40, 42, 145 N.M. 513 (applying fundamental error review under similar circumstances where defendant did not request a mistrial or seek a finding of prejudice); “inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial.”)

E. The court abused its discretion in admitting prior bad acts.

The appellate courts review a trial court's decision to admit evidence under Rule 11-404 for abuse of discretion. *State v. Otto*, 2007-NMSC-012, ¶

9, 141 N.M. 443. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the trial court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason.” *Id.* The Court examines “whether the State made a sufficient showing that the evidence would serve a legitimate purpose other than to show character... and whether the probative value was substantially outweighed by the danger of unfair prejudice or other factors.” *State v. Gutierrez*, 2011-NMCA-088, ¶ 18, 150 N.M. 505 (citations omitted).

Rule 11-404(B)(1-2) NMRA states that “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” It then says that the evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

During the trial the prosecution brought in evidence of prior bad acts by Mr. Ramirez. Specifically, witnesses ten, eleven and twelve all testified about prior bad acts. Additionally the prosecution asked about a prior bad act during the cross-examination of Mr. Ramirez.

Witness ten was Rafael Aguilar and he testified about issuing a “no trespass” order to Mr. Ramirez. The defense objected that this was “uncharged conduct” and “violated 404” (presumably Rule 11-404 NMRA). The prosecution made a conclusory statement that it went to motive and the judge permitted testimony to continue. [10-08-13 CD B 3:52:20-4:04:02]

Witness eleven was Daryl Rice and he testified about investigating a broken windshield on May 31, 2007. The defense again objected that this was “uncharged conduct” and requested a continuing objection. The prosecutor replied that he was showing a pattern of conduct. [10-08-13 CD B 4:04:45-4:11:18]

Witness twelve was Johnny Zamora, and he testified about investigating a broken window on June 19th, 2007, at the residence where the killing took place. He testified that he talked to Debra Ramirez and tried to say who she told him had done it. The defense objected on confrontation and hearsay grounds and the judge sustained the objection. The prosecution had no further questions. [10-08-13 CD B 4:14:35-4:17:40]

During cross-examination the prosecution asked Mr. Ramirez if he had head-butted a police officer. The defense objected that the prosecution was offering the evidence under Rule 404. [10-10-13 CD B 1:54:30-1:56:15]

Cumulatively, the introduction of these acts served to create an impression of Mr. Ramirez as troublesome and a lawbreaker. The testimony about the trespass notice was of no relevance. Mr. Ramirez was never charged with trespassing, and there was no defense that he was on the property by mistake nor testimony that he had been invited on it, though it was unclear if the trespass warning was properly issued.

The testimony about the broken windshield was not linked to the killing. The prosecutor asserted that it was introduced to show “a pattern of conduct” but it was more indicative of criminal propensity evidence. The Court of Appeals has noted that care is needed to avoid confusion over such matter, but has held that it was proper to admit a prior bad act when it was used to prove an element of the crime charged. *State v. Gutierrez*, 2011-NMCA-088, ¶¶ 20-21. In Mr. Ramirez’s case, the breaking of a windshield was not an element of any crime charged.

The testimony about the broken window on the house was never explicitly linked to Mr. Ramirez. The witness never stated who had broken the window. He tried to testify that Debra Ramirez had blamed someone but was unable to continue when the judge sustained defense objections. The implication, however, was that Mr. Ramirez had committed the act. Not only

was the broken window not connected with the killing, but the prosecution could not show that Mr. Ramirez had committed the prior bad act.

New Mexico does not appear to have ever explicitly adopted a required level of proof that a person committed a prior bad act before the admission of said bad act. Sister state Arizona has adopted a “clear and convincing” standard of proof. *State v. Terrazas*, 189 Ariz. 580, 583-4, 944 P.2d 1194 (1997) (listing cases in a lengthy discussion of the issue). In Mr. Ramirez’s case, there was no evidence other than the implication that the prosecution wouldn’t have raised the issue unless Mr. Ramirez had indeed committed the deed.

The question about head-butting a police officer was likewise not connected by the prosecution in any manner to the killing of Mr. Robledo.

F. The court abused its discretion by not declaring a mistrial.

The defense requested a mistrial due to prosecutorial misconduct during the cross-examination of Mr. Ramirez. The standard of review under such circumstances is for an abuse of discretion. *State v. Stills*, 1998-NMSC-009, ¶ 49, 125 N.M. 66.

During the cross-examination of Mr. Ramirez the prosecutor asked “And you’ve done a significant amount of legal research on how to get the jury to buy this?” The defense objected and moved for a mistrial. The judge

directed the prosecution to lay a foundation and the prosecutor asked Mr. Ramirez “Do you recall giving a lot of requests to go the law library to research how to beat your charges?” The defense objected once again and the judge said that he would not allow those questions, but he stated that he would not declare a mistrial. [10-10-13 CD B 1:56:15-1:58:25]

New Mexico does not appear to have a case directly on point, but Michigan has dealt with this issue. In that case, during closing argument the prosecution commented about the defendant’s having done legal research and called him a “jailhouse lawyer” and “manipulative” because he had assisted in his own defense. *People v. Sterling*, 154 Mich.App. 223, 232, 397 N.W.2d 182 (1986).

In that case the court stated “We fail to see how this evidence could possibly be relevant to the issue of defendant’s guilt. Moreover, the prosecution’s argument tended to chill the defendant’s exercise of his constitutional right to the effective assistance of counsel. That right includes the right to assist in his own defense. The prosecution’s argument shows a calculated and pervasive strategy of penalizing the defendant for the exercise of his constitutional rights by characterizing defendant’s actions as manipulative abuses of ‘the system.’” *Id.* (citation omitted). The court found


that the prosecution's comments, along with other improper remarks, created a miscarriage of justice. *Id.*

In Mr. Ramirez's case the prosecutor used cross-examination rather than closing arguments, but in the posing of his questions he made the same point. This conduct, combined with the previous introduction of prior bad acts (including one that could not even be pinned on Mr. Ramirez) warranted a mistrial.

IV. CONCLUSION

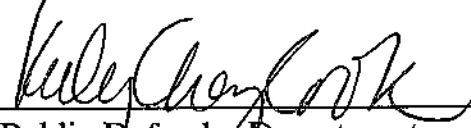
For the reasons stated herein, Mr. Ramirez asks this Court to reverse his convictions in their entirety and remand for retrial.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was served by hand delivery to the Attorney General's Box in the Supreme Court this 12th day of August, 2014.


Public Defender Department

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 34,576

Prior appeal, *State v. Ramirez*, 2011-NMSC-025, 149 N.M. 698

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

STATE OF NEW MEXICO'S ANSWER BRIEF
(Oral Argument Requested)

Appeal from the Ninth Judicial District Court
Curry County, New Mexico
The Honorable Teddy L. Hartley, District Judge

SUPREME COURT OF NEW MEXICO
FILED

JAN - 9 2015



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EXHIBIT

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Record on Appeal and Transcript

The record on appeal consists of—

1. a two-volume record proper,
2. a transcript consisting of two unnumbered CDs, with logs,
3. a supplemental transcript consisting of a single CD, with log, and
4. an envelope containing the exhibit from Defendant's September 15, 2008, competency hearing (cited as, e.g., "**Hrg. Ex., Rept. at 2**"), and exhibits from Defendant's October 2013 trial (cited as, e.g., "**Trial Ex. 89**").

The record on appeal also includes a sealed envelope believed to contain the trial court's notes, which the State did not move to review. [See July 1, 2014, Notice]

Citations to the transcript reflect the CD number, the date, and the time, e.g., "[CD 12-17-2009, 5:09:44 to 5:10:41]." The supplemental transcript, which consists of proceedings held in chambers on October 10, 2013, is cited as, e.g., "[Supp. CD, 10:41:06 to 10:42:18]." Times are based on the "TheRecord Player" (FTR) playback clock, which differ from the logs by as much as five minutes.

Statement of Compliance

Pursuant to Rule 12-213(G) NMRA, this brief was prepared using a proportionally-spaced typeface, Times New Roman. The body of the brief contains 10,721 words, as calculated by Microsoft Word 2010.

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SUMMARY OF PROCEEDINGS

I. Nature of the Case

Following remand, *see State v. Ramirez*, 2011-NMSC-025, ¶ 21, 149 N.M. 698, a jury found Albert Jose Ramirez (Defendant) guilty of the willful and deliberate murder of his mother's long-term boyfriend Eladio Robledo and two counts of tampering with evidence. The trial court sentenced Defendant to life imprisonment, plus six years.

On appeal, Defendant argues that the trial court violated his right to due process when it denied his mid-trial motion to have his competency reevaluated, and that his trial counsel was ineffective. Defendant also argues he was denied a fair trial because (1) a law enforcement officer made an unsolicited comment about trying to obtain a post-arrest statement from him, (2) the jury knew he was restrained the first day of trial, (3) the trial court allowed prior bad act evidence to come before the jury, and (4) the prosecutor asked him a question about the amount of legal research he had performed.

The State asks this Court to reject Defendant's claims and affirm his convictions.

II. Summary of Facts

Early in the afternoon of July 12, 2007, Defendant went to the Clovis, New Mexico, home owned by his mother, Debra Ramirez, and Mr. Robledo ("the

house”) after calling the house thirty or forty times and not getting an answer. [CD 10-10-13, 9:51:32 to 9:51:49, 1:27:38 to 1:27:57] Defendant believed Mr. Robledo was preventing his mother from helping him and “liked to see [him] suffering.” [CD 10-10-13, 1:50:00 to 1:50:13] Defendant’s mother believed Defendant was jealous of Mr. Robledo.¹ [Hrg. Ex., Rept. at 4, 7]

Although his mother’s and Mr. Robledo’s cars were there, no one answered when Defendant knocked at the front door. [CD 10-10-13, 1:47:03 to 1:47:07] Defendant tried to enter the house and, finding the door locked, went to the back of the house and followed Mr. Robledo to the garage when he left the house to put away a vacuum cleaner. [CD 10-10-13, 1:46:54 to 1:47:03, 1:50:19 to 1:50:36]

Defendant shot Mr. Robledo, and then chased after Mr. Robledo as he ran to the front of the house. [CD 10-7-13, 3:47:50 to 3:48:12] When Mr. Robledo fell, Defendant reached out and shot Mr. Robledo twice more in the head. [CD 10-7-13, 2:38:12 to 2:38:21, 2:38:35 to 2:39:01, 3:49:50 to 3:51:27] Sam Saiz, an across-the-street neighbor, and Grace Finkey, a passing motorist, saw Defendant shoot Mr. Robledo.

After shooting Mr. Robledo, Defendant removed the red shirt and denim shorts he was wearing and ran from the house up an alley. [CD 10-8-13, 9:49:10 to 9:49:24, 9:50:25 to 9:50:40] About a block away, he threw the gun in a

¹Defendant’s mother avoided service of the State’s subpoena, and did not appear as a witness at trial. [See CD 1-8-14, 11:03:20 to 11:04:24]

dumpster behind a Rags to Riches store; two blocks later he threw away his shorts. [CD 10-8-13, 11:24:43 to 11:25:25, 11:27:03 to 11:27:07] Defendant threw away his shorts because he “knew [police] were going to be looking for [him].” [CD 10-10-13, 10:23:42 to 10:24:00] He threw away the gun because he “did not want to carry the weapon with [him],” “was trying to get away . . . because [he] knew he was in some trouble. . .,” and believed law enforcement’s inability to find the gun “would help [him] get out of jail.” [CD 10-10-13, 10:23:04 to 10:23:42, 10:26:31 to 10:27:35, 1:29:28 to 1:29:37, 1:36:40 to 1:37:44]

First responders found Mr. Robledo on the ground bleeding from the head and gasping for air. [CD 10-8-13, 9:13:10 to 9:13:20] Mr. Robledo was pronounced dead about twenty-five minutes after being shot. [See CD 10-9-13, 9:38:20 to 9:38:29] An autopsy showed Mr. Robledo suffered blunt force injuries to his face, and had been shot in the right forehead and the back of the head. [Trial Ex. 89, 91; CD 10-9-13, 8:51:30 to 8:51:44, 8:53:34 to 8:53:45, 9:04:52 to 9:05:00] He also suffered a gunshot wound to his left arm and two gunshot wounds to his chest. [See Trial Ex. 95] The Office of the Medical Investigator (OMI) ruled Mr. Robledo’s death a homicide, caused by multiple gunshot wounds. [CD 10-9-13, 9:24:38 to 9:25:01]

On July 15, 2013, three days after the murder, police found Defendant hiding in a friend’s apartment and arrested him. [CD 10-8-13, 2:02:40 to 2:02:51]

Shortly after being booked into the Curry County Detention Center, Defendant telephoned his aunt and one of his “homies,” Crimson Maes. **[See Trial Ex. 83; Trial Ex. 84]** In the call to his aunt, Defendant told her he needed her to tell his cousin about a “toy” or “present” he left in the dumpster behind Rags to Riches. **[Trial Ex. 83, 5:07 to 6:13, 7:04 to 7:16]**² He told his aunt, “If they don’t have that, I can get out.” **[CD 10-8-13, 3:48:10 to 3:49:05]** Defendant told Mr. Maes he needed to “go right now” to Rags to Riches for “bam bam.” **[Trial Ex. 84, 1:20 to 1:49]** Police believed these phone calls related to the gun Defendant used to kill Mr. Robledo, and searched the Rags to Riches’ dumpster, but did not find the gun. **[CD 10-8-13, 3:14:48 to 3:15:57]**

On April 22, 2007, three months before Defendant murdered him, Mr. Robledo obtained a criminal trespass notice barring Defendant from returning to the house. **[Trial Ex. 87; CD 10-8-13, 3:52:54 to 3:55:30]** Defendant testified he returned to the house anyway. **[CD 10-10-13, 1:09:47 to 1:10:23]** On May 31, 2007, two months before the murder, Defendant broke the windshield of Mr. Robledo’s car and told police he did it because he “got mad.” **[CD 10-8-13, 4:05:00 to 4:08:30; CD 10-10-13, 1:12:41 to 1:13:14]** On June 19, 2007, a month before the murder, Ms. Ramirez filed a police report after Defendant broke a front

²The recordings are cited because they are clearer than the transcript. **[See RP 335]**

window of the house when no one answered the door. [Trial Ex. 1, CD 10-8-13, 4:15:14 to 4:17:45; CD 10-10-13, 1:11:07 to 1:12:41]

First thing on June 20, 2007, the day after he broke the front window of the house, Defendant went to a local gun shop where he insisted he needed a gun without paperwork. [CD 10-8-13, 4:20:04 to 4:21:58] The gun shop manager refused to sell Defendant a handgun, and filed a police report because he believed Defendant's insistence about needing a gun was suspicious and should be investigated. [CD 10-8-13, 4:22:46 to 4:23:12; 10-9-13, 11:51:00 to 11:52:00] After asking around for a while, Defendant bought the gun he used to kill Mr. Robledo from the person from whom he bought his "weed." [CD 10-10-13, 1:17:00 to 1:17:39]

On July 11, 2007, the day before the murder, Defendant was "mad at everybody" because Mr. Robledo would not allow his mother to answer the phone. [CD 10-10-13, 3:13:40 to 3:14:01; 3:17:05 to 3:17:15] That day, he went to Walmart where he paid James Patterson, whom he did not know, to purchase .22 caliber ammunition for him, telling Mr. Patterson he needed the ammunition to go camping. [CD 10-9-13, 9:43:50 to 9:44:55, 9:53:39 to 9:54:04]

III. Course of Proceedings

Following a preliminary hearing, the State charged Defendant with the willful and deliberate murder of Mr. Robledo, tampering with evidence based on

Defendant's disposal of the gun, and tampering with evidence based on Defendant's disposal of his denim shorts. **[RP 1-3]**

At a December 10, 2007, pre-trial conference Defendant's counsel alerted the trial court that Defendant's competency to stand trial might be an issue. **[CD 12-10-07, 1:35:40 to 1:35:48]** Two weeks later, on December 28, 2007, he filed a notice that Defendant may raise defenses of insanity and the inability to form specific intent. **[RP 127]** He also initiated a civil proceeding to have Defendant evaluated for competency. *See* D-0905-CV-200700713.

On January 14, 2008, Defendant's counsel gave notice to the court that competency proceedings had been initiated "due to [D]efendant's inability to assist counsel in his defense." **[RP 136]** On January 28, 2008, the trial court ordered a forensic evaluation of Defendant. **[RP 141]** The trial court suspended proceedings in Defendant's case pending outcome of that evaluation. **[CD 2-27-08, 9:03:32 to 9:03:45]** Defendant was evaluated on March 10, 2008, and in a March 14, 2008, Dr. Maxann Schwartz concluded Defendant was not competent to stand trial. **[CD 2-27-08, 8:59:00 to 8:59:13; CD 10-9-13, 10:19:57 to 10:20:20]**

On April 17, 2008, after the parties stipulated to Dr. Schwartz's report and to the trial court entering a finding that Defendant was not competent to stand trial and was dangerous, the trial court entered an order committing Defendant to the New Mexico Behavioral Health Institute at Las Vegas (NMBHI) for treatment to

competency. **[RP 146-49]** On June 5, 2008, NMBHI admitted Defendant for round-the-clock observation, evaluation and treatment. **[Hrg. Ex., Rept. at 1; CD 9-15-08, 1:49:19 to 1:49:51]**

On August 18, 2008, NMBHI issued its report. **[See Hrg. Ex., Rept. at 1]** The report, prepared by Dr. Joanne Burness, a licensed clinical psychologist, concluded Defendant was competent to stand trial, and was “feigning and malingering psychiatric symptoms and cognitive impairment” to avoid adjudication. **[Hrg. Ex., Rept. 9; see CD 9-15-08, 2:12:32 to 2:12:42]** Dr. Burness explained Defendant –

tried to present . . . evidence of psychiatric illness, medical and physical health problems and cognitive impairment[,] none of which in this examiner[']s and the opinion of the medical physician and the staff psychiatrist are genuine.

[Hrg. Ex., Rept. at 1] She concluded –

there is substantial evidence that if [Defendant] chooses he can demonstrate adequate rational and factual knowledge of his charges, the court process and rationally assist in the preparation of his defense.

[Hrg. Ex., Rept. at 1-2] At the September 15, 2008, hearing on Defendant’s competency, the trial court admitted Dr. Burness’s report into evidence without objection. **[CD 9-15-08, 1:38:50 to 1:38:59]**

At the hearing, Dr. Burness explained Defendant refused to communicate or cooperate when he arrived at NMBHI, and then refused to come out of his room to

be evaluated; he cooperated in the evaluation only after being told he could not avoid it. [CD 9-15-08, 2:20:38 to 2:20:55, 2:27:18 to 2:27:26; Hrg. Ex., Rept. at 5-6] Defendant demanded to see the staff psychiatrist and a medical doctor every day, but none of Defendant's physical complaints could be validated; he admitted feigning illness to avoid evaluation. [CD 9-15-08, 1:56:00 to 1:57:18; Hrg. Ex., Rept. at 5-6]

Dr. Burness met with Defendant multiple times, personally observed his behaviors, and spoke regularly with those involved in his treatment and observation. [CD 9-15-08, 1:42:44 to 1:44:15] She testified NMBHI staff received information from the jail that Defendant had been asking other inmates how to "fool the system to fake mental illness," and it took the staff only about two weeks to figure out Defendant's statements and behaviors were not consistent with mental illness. [CD 9-15-08, 1:52:20 to 1:52:32, 2:14:17 to 2:14:32] In fact, she believed if Defendant had access to the Diagnostic and Statistical Manual of Mental Disorders (DSM) he would decide he had every psychiatric condition it identified. [CD 9-15-08, 2:06:25 to 2:06:34] Dr. Burness expressed her opinion that Defendant is a "disturbed young man . . . but he is not mentally ill." [CD 9-15-08, 1:57:18 to 1:57:48, 2:06:25 to 2:06:34]

While at NMBHI, Defendant invalidated the Millon Clinical Multiaxial Inventory (Third Edition) (MCMI-III), a self-report measure of 175 true/false

statements for obtaining information on personality functioning and disorders and a range of mental health indicators, by answering “true to pretty much everything.” [CD 9-15-08, 2:01:20 to 2:01:44, 2:27:59 to 2:28:14; Hrg. Ex., Rept. at 6] He scored forty-seven on the Structured Inventory of Malingering Symptomology (SIMS), a screening measure on which a score greater than fourteen suggests symptom over-exaggeration and reflects “a deliberate effort to be more impaired” than one is in reality. [CD 9-15-08, 2:03:10 to 2:04:30; Hrg. Ex., Rept. at 6-7] Defendant regularly attended anger management and substance abuse group sessions, but avoided the competency restoration group, signaling to NMBHI staff that he wanted to avoid being found competent. [CD 9-15-08, 1:59:29 to 2:00:01]

Based on Defendant’s interactions with NMBHI staff and the Revised Competency Assessment Instrument (R-CAI), Dr. Burness believed Defendant satisfied the statutory requirements for competency: He understood the nature and significance of the criminal proceedings against him, he had a factual understanding of his criminal charges and he would be able to assist in his defense. [Hrg. Ex., Rept. at 8] See UJI 14-5104 NMRA. For example, while adamantly denying *any* knowledge of court procedures and the trial process, Defendant actively pursued information about how first-degree murder could be reduced to a fourth-degree felony, talked about the types of pleas available to him, and discussed how his charges would be dismissed if he was found incompetent. [CD

9-15-08, 1:52:38 to 1:53:05, 2:08:27 to 2:09:08] After learning incompetency would not result in dismissal of his charges, Defendant was clear about the outcome he desired: He wanted one year of pre-conviction confinement credit, one year of house arrest, and four years of probation, which he believed was possible if the first-degree murder charge was reduced based on a claim of temporary insanity.

[CD 9-15-08, 1:53:05 to 1:53:39, 2:10:38 to 2:11:00] He also seemed to decide he would prefer commitment to incarceration, and asked if he should be thinking about claiming he was guilty but mentally ill, or not guilty by reason of insanity.

[CD 9-15-08, 2:07:50 to 2:08:27, 2:13:02 to 2:14:18] Defendant told staff he was happy to go before a jury, which would be sympathetic after he cried and explained how distressing his life had been. **[CD 9-15-08, 2:11:25 to 2:12:05, 2:10:35 to 2:11:00]**

Dr. Burness believed Defendant was capable of communicating with others, and would be able to testify on his own behalf. **[CD 9-15-08, 2:33:30 to 2:33:56]** She also believed Defendant would be able to assist his attorney, but problems might arise from Defendant's "difficult personality and his unwillingness to accept any responsibility for his actions in addition to his strong tendency to blame others and to [] feign[] mental illness, cognitive and physical impairment in order to [] avoid adjudication." **[Hrg. Ex., Rept. at 9]** She described Defendant's personality style as "very histrionic, very dramatic," and emphasized personality

style is, to some degree, voluntary and the result of choice. [CD 9-15-08, 1:53:54 to 1:54:01, 2:35:30 to 2:35:55; Hrg. Ex., Rept. at 7] The medications prescribed for Defendant at NMBHI (e.g., Ativan and Zoloft) were not for managing symptoms of a psychotic or thought disorder, but to help Defendant manage his mood. [CD 9-15-08, 1:57:50 to 1:58:45, 2:15:39 to 2:15:59; Hrg. Ex., Rept. at 8] Defendant did not testify or offer contrary evidence.

The day after the hearing the trial court entered an order finding Defendant competent to stand trial. [RP 158-59]

When Defendant's case first went to trial in January 2009, the parties reached a plea agreement during voir dire covering this and two other cases.^{3,4} [CD 1-26-09 (Chambers), 3:12:42 to 3:13:02; see RP 300-04] Under the agreement, Defendant pleaded guilty to first-degree murder, battery on a peace officer, and assault on a peace officer, and the trial court sentenced him concurrently for a sentence of life imprisonment. [CD 1-26-09 (Chambers), 3:13:34 to 3:14:11; RP 305-07] The prosecution agreed to dismiss the two counts of tampering with evidence in this case and the assault charge arising out of Defendant's third case. [CD 1-26-09 (Chambers), 3:14:49 to 3:14:59]

³The first of these cases arose out of a February 2008 incident where Defendant battered two officers who were transporting him to court. See D-905-CR-200800748.

⁴The other case involved Defendant's assault of an inmate at the jail.

On February 25, 2009, Defendant moved to withdraw his plea “since he was not in the right state of mind when he entered the plea.” **[RP 309-12, ¶ 10]**

Following a June 25, 2009, hearing, at which Defendant stated he wanted another competency evaluation, the trial court denied Defendant’s motion. **[CD 6-25-09, 11:01:16 to 11:02:30; RP 320; see RP 335]** Defendant appealed. **[RP 325-26]**

On June 13, 2011, this Court vacated Defendant’s convictions on the grounds that Defendant’s plea not knowing, intelligent and voluntary and remanded his case for trial. **[See RP 340]** *See Ramirez*, 2011-NMSC-025, ¶ 21.

On August 18, 2011, when the parties appeared again in trial court, Brett Carter, announced his and the public defender office’s withdrawal as Defendant’s counsel because Defendant was refusing to speak with him and had claimed ineffective assistance of counsel in his appeal. **[CD 8-18-11, 10:03:30 to 10:04:15]** In court that day, Defendant refused to acknowledge the trial court and was completely non-responsive, prompting the trial court to observe Defendant might need another evaluation. **[CD 8-18-11, 10:01:44 to 10:01:48, 10:06:43 to 10:08:45]**

On September 12, 2011, Defendant’s new counsel, Jesse Cosby, appeared and agreed Defendant’s competency needed to be reevaluated. **[CD 9-12-11, 10:54:41 to 10:54:51]** Defendant appeared telephonically from the jail, and according to the caseworker “would not speak at all.” **[CD 9-12-11, 10:59:11 to**

10:59:29] On September 26, 2011, in response to Defendant's motion for an evaluation to determine Defendant's competency to stand trial and his sanity at the time of the shooting, the trial court ordered the Department of Health (DOH) to perform a local forensic evaluation of Defendant. **[RP 372-73; RP 374-75]**

At a March 9, 2012, hearing, the trial court indicated Defendant was refusing to leave his cell or say anything. **[CD 3-9-12, 11:02:18 to 11:02:35]** Mr. Cosby explained that Dr. Richard Fink, whom DOH had retained to perform Defendant's evaluation, could not render an opinion because Defendant "would not cooperate with him in any way, shape or form to allow any assessment to be done." **[CD 3-9-12, 11:02:43 to 11:03:05, 11:06:17 to 11:06:46]** Mr. Cosby informed the court Defendant also was refusing to communicate with him. **[CD 3-9-12, 11:03:40 to 11:04:03]** As recommended by Dr. Fink, Mr. Cosby asked the trial court order Defendant transported to NMBHI where he could be evaluated and observed on a continuous basis and where a determination could be made whether Defendant's total lack of cooperation was the result of mental illness or intransigence. **[CD 3-9-12, 11:05:12 to 11:06:22, 11:08:55 to 11:09:08]** The trial court agreed and, on March 15, 2012, ordered Defendant transported to NMBHI for evaluation. **[RP 386-87; RP 388]**

On June 25, 2012, when the parties next appeared, Defendant, appearing telephonically, refused to hold the phone to his ear to participate and the trial court

directed the jail to put the call on speakerphone. **[CD 6-25-12, 2:45:20 to 2:45:45]** After learning Defendant had not been transported to NMBHI, the trial court emphasized it was “absolutely essential” for NMBHI to perform an evaluation and stated it would sign any order and use whatever influence it had to achieve that purpose. **[CD 6-25-12, 2:51:20 to 2:51:48, 2:52:16 to 2:52:40]**

On July 18, 2012, the Curry County Sheriff’s Office transported Defendant to NMBHI. **[RP 392]** At NMBHI, Defendant refused to participate in the evaluation, and Dr. Douglas Davis, the examining psychologist, reported Defendant’s “actions seemed quite clearly volitional and not the result of mental illness.”

The trial court set a competency hearing for October 9, 2012, and the State subpoenaed Dr. Davis to testify. **[RP 395; RP 396]** Defendant sought, and the trial court ordered, a continuance of the hearing on the basis that Defendant apparently had agreed to be evaluated, and would meet with Dr. Fink on November 30, 2012. **[RP 400]**

On March 1, 2013, the parties stipulated to an order accepting Dr. Fink’s January 17, 2013, report and agreeing Defendant was competent to stand trial. **[RP 405; see also CD 1-8-14, 10:27:14 to 10:28:47]** On April 11, 2013, the trial court set Defendant’s case for trial from August 5-9, 2013. **[RP 409]**

Following the finding of competency and after nearly two years of silence, Defendant became an active participant in the process. At a July 29, 2013, status conference, he addressed the court regarding the letters he had written stating he wanted new counsel because Mr. Cosby had not fulfilled his duties and he was confused because Mr. Cosby was not telling him what was happening. [CD 7-29-13, 9:35:13 to 9:36:25] Defendant asked for a continuance to get a new attorney, to prepare his case and to have another psychiatric evaluation, which would show he was suffering from “psychosomatic delusions and hallucinations and severe depression and anxiety.” [CD 7-29-13, 9:41:06 to 9:41:32, 9:36:58 to 9:37:20, 9:39:58 to 9:40:10] The trial court reviewed Defendant’s file, stated it was confident Mr. Cosby was providing Defendant competent representation, and denied Defendant’s requests for substitute counsel and a continuance. [CD 7-29-13, 9:42:31 to 9:43:52] Defendant persisted in his desire for a continuance, explaining he had “always been remorseful and everything,” and he “would have took the plea, but they gave me two-and-one-half extra years that [he] wasn’t supposed to get.” [CD 7-29-13, 9:46:45 to 9:46:56]

Ultimately, Defendant’s case did not go to trial until October 7, 2013. The first day of trial, the jury heard testimony from Mr. Saiz, Ms. Finkey and a crime scene investigator. The second day of trial, after the trial court released the jury for the day, the prosecutor emphasized its first two witnesses the next day needed to

testify in a timely manner because of out-of-state travel arrangements and a serious medical condition. **[CD 10-8-13, 4:35:10 to 4:35:50]**

When the parties appeared the third morning of trial, Mr. Cosby told the trial court Defendant had informed him he was feeling unwell, but had not completed the paperwork to be examined by the jail nurse. **[CD 10-9-13, 8:33:05 to 8:33:43]** The trial court refused to delay trial so Defendant could be transported back to the jail for examination, and stated trial would proceed while the nurse was brought to the courthouse. **[CD 10-9-13, 8:33:50 to 8:34:04, 8:35:25 to 8:35:39, 8:38:30 to 8:38:47]** Defendant told the court he was concerned the jury would look at him and think he did not care. **[CD 10-9-13, 8:38:30 to 8:39:00]**

After the nurse examined Defendant and concluded he was fine **[CD 10-9-13, 10:19:18 to 10:19:22]**, Mr. Cosby told the trial court Defendant was telling him “he did not understand,” “did not know how to behave,” and was “not capable” of assisting in his defense. **[CD 10-9-13, 10:16:15 to 10:16:43, 10:17:28 to 10:17:37]** Mr. Cosby said he did not know whether Defendant was malingering or decompensating, and asked the court to recess trial and order an immediate competency evaluation. **[CD 10-9-13, 10:17:37 to 10:18:35]**

The trial court stated it understood Mr. Cosby’s concerns, but his observations of Defendant that morning, coupled with significant information in the file that Defendant was a malingerer, led it to believe Defendant was

malingering. **[CD 10-9-13, 10:21:03 to 10:21:24]** It denied Defendant's motion, and after listening to Defendant's emotional statement about the physical and psychological problems he faced and Mr. Cosby's observations regarding Defendant's behavior, asked everyone to remain alert to anything that might require it to revisit its ruling. **[CD 10-9-13, 10:22:32 to 10:25:43, 10:26:40 to 10:27:35, 10:28:00 to 10:28:52]**

After the State rested four hours later, Mr. Cosby reported Defendant was increasingly difficult to deal with. **[CD 10-9-13, 2:38:44 to 2:40:04]** In response, the court read from the statement of issues filed in Defendant's first appeal **[see RP 332]**, concluded Defendant was persisting in "faking" his symptoms as observed by Dr. Burness, and confirmed its ruling that Defendant was competent to stand trial. **[CD 10-9-13, 3:11:15 to 3:13:24]**

The following morning, at Defendant's behest, Mr. Cosby made a record regarding his decision not to call Josie Cacias, whom Defendant wanted to testify. **[CD 10-10-13, 9:21:04 to 9:22:20]** Defendant also made a statement regarding how his defense had been limited, his mental illnesses, the amount of media his case was receiving, the quality of Mr. Cosby's representation, motions he wanted filed, and other issues he would present in his appeal; he also demanded to be the first defense witness so he could communicate his defense. **[CD 10-10-13, 9:22:30 to 9:25:57, 9:26:18 to 9:27:00]**

Defendant was the first defense witness. Throughout his direct examination, Defendant refused to answer many questions directly saying he wanted to “explain everything.” [See CD 10-10-13, 9:39:42 to 9:40:17] When told he needed to answer questions directly, Defendant said he did not know what was going on because it was his first jury trial, and he was entitled to tell the jury his life story, stating “this is my life on the line.” [CD 10-10-13, 9:48:10 to 9:49:30, 10:03:20 to 10:03:28] Defendant apologized to the jury for not crying, saying he may not appear remorseful just then, but they “should have seen [him] a few days ago [when he] was in chronic depression.” [CD 10-10-13, 10:26:11 to 10:26:24]

Trial proceeded, and the defense rested after testimony from Jose Ramirez, Defendant’s brother, Hesiquia Ramirez, Defendant’s sister, and Lupe Casillas, an aunt with whom Defendant lived for a short time. [CD 10-10-13, 3:39:20 to 3:39:24]

During the jury instruction conference, the prosecution argued it was entitled to present a rebuttal case consisting of expert witness testimony regarding Defendant’s competency, his malingering, and the lack of clinical evidence of mental illness if the trial court gave the jury Defendant’s tendered instructions on competency and a guilty but mentally ill (GBMI).⁵ [Supp. CD, 3:44:20 to 3:45:46] Mr. Cosby contested the prosecution’s assertion that Defendant was not

⁵The Legislature repealed the statute allowing for a GBMI verdict in 2010. See NMSA 1978, § 31-9-4 (repealed 2010).

entitled to a GBMI instruction because he had not presented competent testimony regarding mental illness. **[Supp. CD, 3:46:13 to 3:47:40]**

Mr. Cosby stated the defense was withdrawing its tendered instruction on competency, and would forgo a GBMI instruction because it had no practical effect. **[Supp. CD, 3:46:33 to 3:46:46, 3:47:55 to 3:48:46, 3:57:00 to 3:57:35, 4:01:10 to 4:01:28]** He stated the defense was not asking for a self-defense instruction because there was no evidence to support the element of immediate danger, and was withdrawing its proposed instruction that Defendant was unable to form specific intent. **[Supp. CD, 3:52:03 to 3:52:35]**

On this basis, Mr. Cosby objected to the prosecution presenting a rebuttal case, argued testimony based on NMBHI's 2008 report that Defendant was a malingerer and not suffering from a mental illness was irrelevant, and posited that if the prosecution presented a rebuttal case the defense should be given the opportunity to arrange for Dr. Schwartz's appearance as an expert on sur-rebuttal. **[Supp. CD, 3:48:46 to 3:49:16, 3:50:10 to 3:50:25]** The prosecution countered that Dr. Burness had been observing Defendant's courtroom behavior that day and would testify Defendant was continuing to fake his symptoms. **[Supp. CD, 4:09:00 to 4:09:29]** The trial court ruled the prosecution could present its rebuttal case, and, while withholding a ruling on whether Defendant would be allowed to present a sur-rebuttal case, made clear Defendant would be given time to arrange

for his expert's presence if sur-rebuttal was allowed. **[Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]**

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent **[See Supp. CD, 3:51:56 to 3:52:00]**, the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. **[CD 10-10-13, 4:34:39 to 4:36:02]** When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. **[CD 10-10-13, 4:36:02 to 4:39:12]** Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. **[CD 10-10-13, 4:41:38 to 4:42:15]**

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. **[CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]**

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. **[CD 10-11-13, 11:45:13 to 3:06:20]**

At sentencing hearing, Defendant argued Mr. Cosby failed to effectively represent him and he did not get a fair trial, submitting the jury would not have convicted him if it fully understood he was the victim. [CD 1-8-14, 10:48:00 to 10:51:23] Before imposing a sentence of life imprisonment for the first-degree murder of Mr. Robledo, and consecutive three-year sentences for his tampering with evidence convictions, the trial court assured Defendant once again that he had received excellent representation. [CD 1-8-14, 10:57:55 to 10:58:15]

In his appeal, Defendant does not challenge his convictions on sufficiency of the evidence grounds and abandoned his claim that his conviction of two counts of tampering with evidence violates double jeopardy. [See Supp. CD, 4:03:13 to 4:05:45; SOI 7] *See State v. Correa*, 2009-NMSC-051, ¶ 31, 147 N.M. 291 (“On appeal, issues not briefed are considered abandoned, and we do not raise them on our own.”).

ARGUMENT

I. The trial court did not violate Defendant’s right to due process when it denied his mid-trial motion for a recess to reevaluate his competency to stand trial.

The trial court did not deny Defendant due process by refusing to recess trial to reevaluate Defendant’s competency to stand trial. [See BIC 3, 23-35]⁶

⁶Defendant devotes substantial attention to a discussion of “the schism among psychologists over whether the definition of ‘mental illness’ encompasses ‘personality disorders.’” [see BIC 24-28, 34-35] This discussion is not relevant to

Where a defendant claims the trial court responded incorrectly when faced with a question of competency, the standard of review depends on whether the defendant bases his claim on “the proper process to be afforded him once [competency has] been raised,” or on the trial court’s determination of competency. *State v. Montoya*, 2010-NMCA-067, ¶ 11, 148 N.M. 495. Where a defendant’s claim is due process-based, the trial court’s ruling is subject to de novo review. *Id.* By contrast, where his claim involves the trial court’s determination of competency, or its denial of a motion for a competency evaluation, the ruling is reviewed for an abuse of discretion. *State v. Noble*, 1977-NMSC-031, ¶ 7, 90 N.M. 360; *State v. Flores*, 2005-NMCA-135, ¶ 20, 138 N.M. 636. Here, Defendant frames his claim in terms of due process, and as prescribed by *Montoya*, his claim is subject to de novo review. **[BIC 23]** *But see, Flores*, 2005-NMCA-135, ¶ 21 (rejecting the defendant’s claim that the issue of whether the trial court erred in refusing further competency proceedings is subject to de novo review).

Defendant’s claim first requires a determination of what process Defendant was due. Defendant claims he was denied due process because the trial court did not recess trial. **[BIC 3]** But, Rule 5-602(B)(2)(b) NMRA, which Defendant cites **[BIC 32]**, does not require a recess when competency is raised during trial.

Rather, it provides that “[i]f the issue of the defendant’s competency to stand trial

his claim. Even those suffering from severe mental illness can be competent to stand trial. *See Indiana v. Edwards*, 554 U.S. 164, 178 (2008).

is raised during trial, the trial jury shall be instructed on the issue.” Defendant does not assert Rule 5-602(B)(2)(b) violates due process.

Rule 5-602(B)(2)(b)’s requirement for the jury to be instructed on competency, like the requirement in NMSA 1978, Section 31-9-1 (1993) that proceedings must be suspended when competency is raised, are subject to a threshold showing that the claim of incompetency is supported by good cause. *Flores*, 2005-NMCA-135, ¶ 19 (statutes and rules governing competency “intend that whenever a *legitimate* concern about the present ability of a defendant to consult and understand is brought to the court’s attention, the court is required to consider whatever competency-related evidence is before the court and to determine whether there exists a reasonable doubt as to the defendant’s competency to stand trial”) (emphasis added); *see also State v. Rael*, 2008-NMCA-067, ¶ 6, 144 N.M. 170 (“If the district court finds reasonable doubt as to competency, the issue is submitted to a jury.”); *State v. Hovey*, 1969-NMCA-049, ¶ 18, 80 N.M. 373 (a defense counsel’s good faith assertion alone is not sufficient to raise the question of competence); Rule 5-602(C) NMRA (“Upon motion and upon good cause shown, the court shall order a mental examination of the defendant before making any determination of competency . . .”). In the absence of a good cause showing, there is no issue for the jury to decide. *Noble*, 1977-NMSC-031, ¶ 7; *State v. Garcia*, 2000-NMCA-014, ¶ 28, 128 N.M. 721.

Here, any due process Defendant was denied was, at most, a jury instruction. But, Defendant did not preserve this claim for review because he did not submit a jury instruction on competency or object to the jury instructions as given. [Supp. CD, 3:46:33 to 3:46:46] *See State v. Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400 (a defendant does not properly preserve his claim that the jury should have been instructed on competency unless he offers an instruction on competency or objects to the jury instructions). Absent preservation, Defendant's claim is subject to fundamental error review. *See* Rule 12-216(B) NMRA.

Defendant did not invoke this Court's discretion to review his claim for fundamental error. Assuming *arguendo* he had, the record demonstrates the trial court did not commit fundamental error. Fundamental error occurs in "cases with defendants who are indisputably innocent, and cases in which a mistake in the process makes a conviction fundamentally unfair notwithstanding the apparent guilt of the accused." *State v. Barber*, 2004-NMSC-019, ¶ 17, 135 N.M. 621.

Here, the record does not show the trial court made a "mistake in the process." Every time Defendant's competency was raised, the trial court complied with established procedural requirements before making a determination that Defendant was competent to stand trial.

Immediately after Mr. Carter notified the trial court on January 14, 2008, that he had moved to have Defendant's competency evaluated, the trial court

ordered a professional evaluation and suspended proceedings in Defendant's case.

[RP 141; CD 2-27-08, 9:03:32 to 9:03:40] *See* NMSA 1978, § 31-9-1.1 (1993).

When that evaluation concluded Defendant was not competent to stand trial, the trial court, with the concurrence of the parties, found Defendant dangerous and ordered Defendant transported to NMBHI for treatment to competence. **[RP 146-49]** *See* NMSA 1978, § 31-9-1.2(B) (1993). After NMBHI rendered its report concluding Defendant was a malingerer and competent to stand trial, the trial court held a timely evidentiary hearing, proceeded to find Defendant competent, and re-scheduled Defendant's case for trial. **[RP 158-59]**

On September 26, 2011, after Mr. Cosby succeeded Mr. Carter as Defendant's counsel and raised a question of Defendant's competency, the trial court ordered another professional evaluation of Defendant. **[RP 372-73; RP 374-75]** Defendant refused to cooperate in that evaluation, and the trial court, believing an evaluation was "absolutely essential," ordered Defendant be transported back to NMBHI for evaluation. **[RP 386-87; RP 388; RP 392; CD 6-25-12, 2:51:20 to 2:51:32]** Defendant also refused to participate in the NMBHI evaluation, and the trial court scheduled an October 9, 2012, hearing on Defendant's competency. **[See RP 395; RP 396]**

The trial court continued that hearing based on Defendant's apparent agreement to undergo evaluation by Dr. Richard Fink on November 30, 2012. **[RP**

400] On March 1, 2013, based on Dr. Fink's January 17, 2013, report, and after a delay of nearly two years from the time this Court remanded Defendant's case for trial, the parties stipulated Defendant was competent to stand trial. **[RP 405]**

Defendant's case proceeded to trial on October 7, 2013, and, on the third day of trial, Mr. Cosby moved for a recess so Defendant could be reevaluated. **[CD 10-9-13, 10:17:37 to 10:17:52]** *See Flores*, 2005-NMCA-135, ¶ 29 (a trial court "may consider defense counsel's observations and opinions, but [] those observations and opinions alone cannot trigger reasonable doubt about the defendant's competency"). The trial court, taking into account Mr. Cosby's concerns, the history of Defendant's case, Defendant's previous evaluations, and Defendant's previous and current courtroom behavior, denied the motion. **[CD 10-9-13, 10:21:03 to 10:21:24, 10:23:22 to 10:23:55]** *See Drope v. Missouri*, 420 U.S. 162, 180 (1975) ("The import of our decision in *Pate v. Robinson*[, 383 U.S. 375 (1966),] is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required[.]"); *Flores*, 2005-NMCA-135, ¶ 19 ("the court is required to consider whatever competency-related evidence is before the court and to determine whether there exists a reasonable doubt as to the defendant's competency to stand trial"). Notwithstanding its belief that Defendant was malingering, but consistent with its responsibilities, the trial court asked

everyone to remain alert to anything that might require it to revisit its ruling. [CD 10-9-13, 10:28:00 to 10:28:52] *Drope*, 420 U.S. at 181 (“... a trial court must always be alert to circumstances suggesting a change that would render an accused unable to meet the standards of competence to stand trial”).

Four hours later, Mr. Cosby raised the issue of Defendant’s competency again because Defendant was not assisting in his defense. [CD 10-9-13, 2:38:44 to 2:40:05] Once again, the trial court complied with the requirement that it consider all the evidence before confirming its ruling that Defendant was competent to stand trial. [CD 10-9-13, 3:11:16 to 3:13:24] That history included Mr. Carter’s January 15, 2009, assessment that Defendant’s lack of cooperation was due more to Defendant’s unwillingness to cooperate than to an inability to cooperate. [CD 1-15-09, 3:29:50 to 3:30:50]

From this record, it is evident the trial court undertook extraordinary efforts to ensure Defendant received all the process he was due in order to ensure he was not denied a fair trial by being tried while incompetent.

Defendant’s claim on appeal is limited to the issue of due process; he waived any claim the trial court abused its discretion when it determined he was competent to stand trial. [BIC 23] *State ex rel. King v. B & B Inv. Group, Inc.*, 2014-NMSC-024, ¶ 47 (a trial court abuses its discretion when its “decision is clearly untenable or contrary to logic and reason”). By not challenging the trial court’s

determination that he was competent, Defendant is bound by the trial court's ruling that he was competent to stand trial. *See Stueber v. Pickard*, 1991-NMSC-082, ¶ 9, 112 N.M. 489 (an unchallenged finding of the district court is binding on appeal).

Irrespective of Defendant's waiver, and notwithstanding his assertion that there was "ample evidence of incompetence" [**BIC 28, 29**], the record is replete with evidence supporting the trial court's ruling. *See State v. Moreland*, 2008-NMSC-031, ¶ 9, 144 N.M. 192 ("When there exist reasons both supporting and detracting from a trial court decision, there is no abuse of discretion." (internal quotation marks and citation omitted)).

"A defendant is presumed competent to stand trial[.]" *Rael*, 2008-NMCA-067, ¶ 6. "A person is competent to stand trial when he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and . . . he has a rational as well as factual understanding of the proceedings against him." *Flores*, 2005-NMCA-135, ¶ 16 (internal quotation marks and citation omitted). More specifically, a defendant is competent to stand trial if he (1) "understands the nature and significance of the criminal proceedings against him[.]" (2) "has a factual understanding of the criminal charges[.]" and (3) "is able to assist his attorney in his defense." UJI 14-5104; *Drope*, 420 U.S. at 171 ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against

him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.”).

Assertions of incompetency must be substantiated, and the defendant has the burden of proving by a preponderance of the evidence that he is not competent to stand trial. *State v. Chavez*, 2008-NMSC-001, ¶ 21, 143 N.M. 205 (“existing case law [] long ago established the appropriate standards of proof for the initial determination as well as the redetermination of competency – a preponderance of the evidence” (emphasis omitted)); *Garcia*, 2000-NMCA-014, ¶ 20; *see also United States v. Boigegrain*, 155 F.3d 1181, 1189 (10th Cir. 1998) (competency to stand trial is a factual question).

Here, Mr. Cosby’s motion to have Defendant reevaluated came on the heels of the trial court’s refusal to recess trial because Defendant claimed he was feeling unwell, a claim reminiscent of the tactic Defendant admitted using at NMBHI to avoid evaluation. [Hrg. Ex., Rept. at 5-6] After the trial court denied the motion, Defendant appealed to the trial court’s sympathy by making an emotional statement regarding his physical and psychological problems [CD 10-9-13, 10:23:55 to 10:25:43], a ploy Defendant announced he would employ while he was at NMBHI [see CD 9-15-08, 2:11:25 to 2:12:05], and which he repeated on other occasions during trial.

That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about how he had not been properly evaluated and represented, the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial. [See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

his life and that his life was on the line [CD 10-9-13, 2:45:11 to 2:45:18; CD 10-10-13, 10:03:25 to 10:03:28], and by emphasizing the importance of the jury knowing all the facts he believed were relevant to his case. [CD 10-9-13, 2:42:00 to 2:34:54; CD 10-10-13, 9:48:17 to 9:49:30, 10:03:11 to 10:03:25, 1:01:41 to 1:02:08, 1:08:07 to 1:08:36; 2:09:50 to 2:09:59] Both after the jury retired to deliberate, and after it returned its verdict Defendant sought to make on-the-record statements. [CD 10-11-13, 11:46:10 to 11:46:28, 3:13:04 to 3:13:13]

In other words, Defendant, through his concerted campaign to demonstrate and make a record that he lacked competency succeeded in proving the opposite. He also validated Dr. Burness's opinion that he was trying to avoid adjudication by "feigning and malingering psychiatric symptoms and cognitive impairment."

[Hrg. Ex., Rept. at 9] *Cf. Illinois v. Anderson*, 397 U.S. 337, 349 (1970)

(Brennan, J., concurring) ("[T]here can be no doubt whatever that the governmental prerogative to proceed with a trial may not be defeated by conduct of the accused that prevents trial from going forward."); *id.* ("It does not seem to us to be consonant with the dictates of common sense that an accused person . . . should be at liberty whenever he pleased, . . . to break up a trial already commenced. The practical result of such a proposition, if allowed to be law, would be to prevent any trial whatever until the accused person himself should be pleased to permit it. . . .

This would be a travesty of justice which could not be tolerated.” (internal quotation marks and citation omitted)).

Defendant correctly distinguishes the facts of his case from those in *State v. Solomon*, No. 33,975 (N.M. S. Ct. Aug. 4, 2014) (non-precedential) [BIC 32-33], but overlooks a more important distinction: *Solomon* was decided on the basis of whether the trial court abused its discretion in determining the defendant’s competence to stand trial, *id.* ¶ 14, an issue Defendant waived here. [BIC 23] The same distinction applies to the other cases Defendant cites. [BIC 33-35] *See Flores*, 2005-NMCA-135, ¶ 35 (concluding the trial court did not abuse its discretion when it determined there was no reasonable doubt as to the defendant’s competency); *State v. Castillo*, No. 31,054, ¶ 9 (N.M. Ct. App. Aug. 28, 2013) (non-precedential) (applying an abuse of discretion standard to the trial court’s competency determination), *cert. denied*, 2013-NMCERT-010 (No. 34,342, Oct. 30, 2013).

In the end, Defendant’s argument highlights the distinction between an *incompetent* defendant’s *incapacity* to understand the system and cooperate, and a *competent* defendant’s *contrived efforts* to abuse the system to thwart adjudication and undermine the administration of justice. Defendant’s conduct exemplifies the latter. [See CD 9-15-08, 1:52:20 to 1:52:32, 2:14:17 to 2:14:32; CD 1-15-09, 3:29:50 to 3:30:50] Accordingly, this Court should reject Defendant’s claim.

II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland's* two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

(internal quotation marks and citations omitted). “[A]n assertion of prejudice is not sufficient to demonstrate that a choice caused actual prejudice.” *State v. Sanchez*, 1995-NMSC-053, ¶ 20, 120 N.M. 247.

Defendant claims Mr. Cosby’s performance was deficient in multiple respects. First, he claims Mr. Cosby was deficient because he did not have him reevaluated for competence mid-trial “even if it required action after court hours” or required additional funds to hire an expert on an urgent basis. **[BIC 36-37]** Defendant cites no authority indicating Mr. Cosby’s failure to secure an emergency after-hours evaluation constitutes deficient performance. *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764 (“We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority.”).

To support his claim, Defendant reaches out to an unpublished out-of-state case for the premise that there is a presumption of prejudice where trial counsel fails to investigate competency. **[BIC 37]** *See Moye v. Warden*, No.

CV98412103S at 5 (Conn. Super. Ct. Mar. 27, 2014) (non-precedential).

Defendant’s reliance on *Moye* is unavailing. In *Moye*, the court found trial counsel properly raised the issue of competency and dismissed the petitioner’s claim of ineffective assistance of counsel. *Id.* at 16-17. In Defendant’s case, this Court should do the same.

Based on the facts in the record, Defendant sensibly does not claim he suffered prejudice from this asserted deficiency in Mr. Cosby's performance. Considering Defendant's history of refusing to cooperate in evaluations, there can be no confidence he would have cooperated even if Mr. Cosby had arranged an emergency evaluation. And, considering the trial court's first-hand observations of Defendant's behavior and dilatory conduct over the course of six years, there is no assurance the trial court would have found Defendant incompetent even if an evaluation concluded otherwise.

Second, Defendant claims Mr. Cosby was deficient because his failure to arrange for expert testimony precluded Defendant from relying on mental illness or lack of capacity defenses. **[BIC 37-38]** At the same time, Defendant effectively concedes Mr. Cosby's performance was not deficient in this regard by acknowledging the prosecution was prepared to offer rebuttal expert testimony to the effect that Defendant was feigning mental illness and cognitive deficiencies. **[Supp. CD, 3:51:50 to 3:52:12, 3:57:00 to 3:57:33, 4:01:06 to 4:01:24, 4:08:54 to 4:09:13]** This indicates Mr. Cosby's decisions may have represented "a plausible, rational strategy or tactic," which is the antithesis of incompetent performance.

This specific claim of deficient performance also lacks support in the record, because Defendant repeatedly refused to cooperate in evaluations that *might* have

permitted mental illness or lack of capacity defenses. [See, e.g., CD 12-1-08, 1:34:45 to 1:35:08, 1:37:18 to 1:37:55; CD 1-15-09, 3:33:40 to 3:35:39]

Finally, even if deficient performance on this claim was established, Defendant makes no showing to suggest the jury would have returned a different verdict. See, e.g., *State v. Guerra*, 2012-NMSC-027, ¶ 29 (deliberate intent to kill can be inferred from evidence the defendant killed an incapacitated and defenseless victim); *State v. Cunningham*, 2000-NMSC-009, ¶ 28, 128 N.M. 711 (same).

Defendant concedes his final claims of ineffective assistance of counsel – Mr. Cosby’s failure to call certain witnesses and his promises to Defendant if Defendant testified [BIC 38] – do not find support in the record.

More generally, Defendant’s appellate claim that Mr. Cosby’s performance was deficient is rebutted by the trial court’s repeated observations that Mr. Cosby was representing Defendant in a professional and excellent manner. [See, e.g., CD 7-29-13, 9:42:31 to 9:43:44; CD 10-10-13, 2:14:09 to 2:14:28, 4:38:48 to 4:38:51; CD 1-8-14, 10:57:55 to 10:58:15]

III. The trial court did not err when it ruled Deputy Loomis’s isolated, unsolicited comment that he tried to interview Defendant did not constitute prohibited commentary on Defendant’s Fifth Amendment right to remain silent.

Defendant argues pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, that the trial court abused its discretion when it denied his motion for mistrial after Deputy Sandy

Loomis explained he became involved in the case after Defendant's arrest, and, among other things had "tried to interview" Defendant. [BIC 38-39; *see* CD 10-8-13, 2:12:15 to 2:12:29] *See State v. Samora*, 2013-NMSC-038, ¶ 22 (denial of a motion for mistrial is reviewed for an abuse of discretion). According to Defendant's claim, Deputy Loomis's testimony represented inappropriate commentary on his Fifth Amendment right to remain silent. [See CD 10-8-13, 2:14:08 to 2:14:24] *See* U.S. Const., amend V ("No person . . . shall be compelled in any criminal case to be a witness against himself[.]").

The trial court ruled neither the prosecution's question, nor Deputy Loomis's statement, suggested Deputy Loomis was in search of a post-*Miranda* statement from Defendant. [CD 10-8-13, 2:15:45 to 2:16:18, 2:24:47 to 2:25:22] It denied Defendant's motion for a mistrial, and offered to give a curative instruction, a remedy Defendant did not accept. [CD 10-8-13, 2:25:21 to 2:25:28] Under these circumstances, the trial court did not err. *Samora*, 2013-NMSC-038, ¶ 22 ("In reviewing inadvertent remarks made by witnesses, generally, the trial court's offer to give a curative instruction, even if refused by the defendant, is sufficient to cure any prejudicial effect." (internal quotation marks and citation omitted)).

IV. The record does not support Defendant's claim that the jury saw him shackled.

Defendant claims the jury saw him shackled when he stumbled as he stood up at one point during the first day of trial. [BIC 40; *see* CD 10-7-13, 3:12:42 to

3:13:32] Defendant's claim lacks factual support in the record because the parties and the court agreed the table behind which Defendant was sitting was draped to the floor with black skirting that shielded his shackles from the jury's view. **[See CD 10-7-13, 3:13:42 to 3:13:58]** Additionally, even if the jury had seen Defendant's restraints, "an inadvertent or insignificant exposure to a defendant in shackles" does not give rise to reversal of a defendant's convictions and a new trial. *See State v. Holly*, 2009-NMSC-004, ¶¶ 41-42, 145 N.M. 513.

V. The trial court did not err by allowing the prosecution to present evidence of Defendant's animus toward Mr. Robledo and to cross-examine Defendant regarding previous acts of violence.

Defendant challenges the trial court's admission of evidence of the no trespass order Mr. Robledo took out against Defendant on April 22, 2007, the evidence Defendant broke the windshield of Mr. Robledo's car on May 31, 2007, and evidence of the front window of the house being broken on June 19, 2007.

[BIC 42]

This Court reviews trial court rulings on the admission of evidence for an abuse of discretion. *State v. Montoya*, 2014-NMSC-032, ¶ 15.

Rule 11-404(B) NMRA allows the admission of evidence of other crimes, wrongs, or acts, not to prove that the person had a character trait in conformity with which he acted, but to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or lack of accident." This list is

illustrative, not exhaustive, because “evidence of other wrongs may be admissible on alternative relevant bases so long as it is not admitted to prove conformity with character.” *State v. Martinez*, 1999-NMSC-018, ¶ 27, 127 N.M. 207.

“The initial threshold for admissibility of prior uncharged conduct is whether it is probative on any essential element of the charged crime.” *State v. Gallegos*, 2007-NMSC-007, ¶ 35, 141 N.M. 185 (internal quotation marks and citation omitted). “Because deliberation is an essential element of first-degree murder, evidence with any tendency to make the existence of deliberation more probable or less probable is by definition relevant.” *State v. Balderama*, 2004-NMSC-008, ¶ 25, 135 N.M. 329; *State v. Rojo*, 1999-NMSC-001, ¶¶ 47-48, 126 N.M. 438 (evidence of the deterioration in a defendant’s relationship with his victim has probative value in assessing motive).

The court ruled pre-trial, and without objection, that evidence of the no trespass order Mr. Robledo obtained against Defendant was admissible because it, along with evidence of the broken windshield and the broken window, was relevant to the prosecution’s burden of proving deliberate intent. [CD 1-15-09, 3:41:45 to 3:42:40, 3:44:59 to 3:45:34, 3:47:35 to 3:49:05] When the prosecution presented evidence of the no trespass order at trial, Defendant only challenged admission of the actual order, not testimony about it, and the trial court ruled the order was admissible as to motive. [CD 10-8-13, 3:53:16 to 3:55:55]

After the prosecution presented substantial testimony regarding the broken windshield, Defendant objected on grounds that it was “uncharged conduct” from two months before the murder. **[CD 10-8-13, 4:05:04 to 4:06:51]** The trial court allowed further testimony regarding the incident based on the prosecution’s argument that it demonstrated Defendant’s pattern of conduct toward Mr. Robledo leading up to the incident. **[CD 10-8-13, 4:06:51 to 4:08:01]** Defendant told the responding police officer he broke the window because he “got mad.” **[See CD 10-8-13, 4:08:00 to 4:08:30]**

Defendant’s objection to testimony regarding the broken front window at the house was limited to objecting to hearsay testimony by the responding officer about who Ms. Ramirez reported as having broken the window. **[CD 10-8-07, 4:15:42 to 4:17:25]** The trial court sustained Defendant’s objection. **[CD 10-8-07, 4:17:25 to 4:17:27]** Although the trial court prevented the prosecution from eliciting testimony from the testifying officer that Ms. Ramirez reported Defendant had broken the window **[see BIC 43-44]**, Defendant testified he had broken the window when no one came to the door after he knocked. **[CD 10-10-13, 1:11:07 to 1:11:23]**

Contrary to Defendant’s argument **[BIC 43-44]**, evidence regarding the no trespass order and the broken windshield was relevant and admissible because it demonstrated a pattern of conduct from which the jury could infer Defendant acted

with a deliberate intention to kill Mr. Robledo. Defendant failed to preserve any argument regarding the broken window of the house because he did not move to have the testimony stricken after the trial court sustained his objection to the officer's hearsay testimony. Rule 12-216(A) NMRA ("To preserve a question for review it must appear that a ruling or decision by the district court was fairly invoked.").

Defendant also claims the trial court erred when it allowed the prosecution to cross-examine Defendant about head-butting the transport officers, asserting the evidence was improper evidence under Rule 11-404(B). [BIC 42] *State v. Smith*, 2001-NMSC-004, ¶ 23, 130 N.M. 117 ("the trial court has broad discretion to control the scope of cross-examination"). The trial court did not abuse its discretion by allowing the cross-examination.

Rule 11-404(A) NMRA specifically allows the prosecution to offer evidence rebutting evidence of a criminal defendant's good character and evidence of a defendant's aggressiveness and violent nature if the defendant has attributed those traits to his victim. Rule 11-405(B) NMRA permits the prosecution to prove a defendant's character by specific instances of conduct.

Here, the prosecutor argued, and the trial court correctly agreed, evidence of Defendant's battery on the peace officer was admissible under Rule 11-404(A) and 11-405 because Defendant, having put Mr. Robledo's character into evidence by

testifying Mr. Robledo was the first aggressor, opened the door to specific instances of conduct where Defendant was aggressive and violent. [CD 10-10-13, 12:52:24 to 12:57:20] During cross-examination, the prosecution questioned Defendant regarding his use of violence, referring to Defendant's testimony on direct examination about an incident where he had punched a girl in the face. After some deflection, Defendant agreed he struck the girl. [CD 10-10-13, 1:54:37 to 1:55:09] The prosecution followed up with a question about whether Defendant had head-butted a peace officer, the Defendant agreed he had, and confirmed he wanted the jury to believe he acted in self-defense when he killed Mr. Robledo. [CD 10-10-13, 1:55:18 to 1:56:35]

Based on this record, the trial court did not abuse its discretion when it admitted evidence and allowed cross-examination of Defendant about aggressiveness and violent conduct generally, and specifically with respect to Mr. Robledo.

Assuming *arguendo* the trial court's rulings were in error, Defendant has not shown that he suffered prejudice. *Holly*, 2009-NMSC-004, ¶ 28 (in a harmless error inquiry, defendant bears the initial burden of demonstrating prejudice). The State only has the burden of showing the error was harmless if the defendant demonstrates prejudice. *Id.*

An evidentiary ruling is harmless if there is no probability the error affected the verdict. *State v. Serna*, 2013-NMSC-033, ¶ 22 (improperly admitted evidence is reviewed for non-constitutional harmless error); *State v. Tollardo*, 2012-NMSC-008, ¶ 36 (non-constitutional error is harmless when there is no reasonable probability the error affected the verdict). Among other things to be considered when determining the probable effect of an error on the jury's consideration are the circumstances surrounding the error, including the source of the error, non-objectionable evidence of guilt, and the importance of the erroneously admitted evidence in the prosecution's case. *Serna*, 2013-NMSC-033, ¶ 23.

Here the evidence permitted by the court's rulings complemented and gave context to the eyewitness testimony about how Defendant deliberately chased down Mr. Robledo and shot him twice in the head as he lay helpless on the ground. *See Guerra*, 2012-NMSC-027, ¶ 29. As such, error, if any, is harmless.

VI. The trial court did not err when it denied Defendant's motion for a mistrial after the prosecutor questioned Defendant about the amount of time Defendant spent doing legal research.

The trial court did not abuse its discretion when it denied Defendant's motion for a mistrial after the prosecutor cross-examined Defendant about the legal research he had done about how to get the jury to "buy" his argument that he acted in self-defense when he killed Mr. Robledo. [*See BIC 44-45; CD 10-10-13, 1:56:26 to 1:56:44*]

Defendant's argument, which he frames on appeal as evidence of prosecutorial misconduct, suggests the law carves out certain relevant topics prosecutors cannot address when impeaching or challenging the credibility of testifying defendants. Defendant's inability to find authority supporting his argument is an indicator that his argument lacks viability.

This Court reviews a trial court's denial of a motion for mistrial based on an allegation of prosecutorial misconduct for an abuse of discretion. *State v. Ramos-Arenas*, 2012-NMCA-117, ¶ 1.

It is well settled that in cross-examination, the cross-examiner "is at liberty, and is often compelled, to attack the credibility of the witness, and, for that purpose, must be allowed wide latitude in asking questions which would otherwise be wholly irrelevant to the issue." *State v. Carter*, 1915-NMSC-084, ¶ 13, 21 N.M. 166. "For the purpose of testing the credibility of the witness, it is permissible to investigate the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, inclinations, and prejudices, his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his powers of discernment, memory, and description." *Id.*

Here, after Defendant explicitly agreed his objective was to have the jury believe he killed Mr. Robledo in self-defense, the prosecutor asked Defendant

about the amount of legal research he had done on how to present a viable self-defense defense. After Mr. Cosby called for a mistrial and the trial court asked the prosecutor to lay a foundation for his question, the prosecutor asked whether Defendant remembered making lots of requests to go to the law library to research ways in which he could “beat” the charges against him. **[CD 10-10-13, 1:56:43 to 1:57:13]** At the end of the ensuing bench conference, during which Mr. Cosby assured the trial court Defendant was not pursuing a self-defense defense, the trial court denied Defendant’s motion for a mistrial and precluded the prosecution from asking further questions about the subject. **[CD 10-10-13, 1:57:23 to 1:58:25]** Defendant did not ask for a curative instruction, and the prosecutor complied immediately with the trial court’s directive.

These circumstances do not support a finding of prosecutorial misconduct, particularly after Defendant stated he wanted the jury to believe he acted in self-defense and after he tried to demonstrate to the jury that he lacked understanding about what was happening in the courtroom. *State v. Handa*, 1995-NMCA-042, ¶ 35, 120 N.M. 38 (defendants may not invite error and then later complain).

Defendant analogizes the circumstances supporting his claim to the facts of *People v. Sterling*, 154 Mich. App. 223, 397 N.W.2d 182 (1986). **[BIC 45]** In *Sterling*, the defendant alleged five instances of prosecutorial misconduct, which included extensive questioning and argument about the defendant’s substitution of

counsel, the letters he wrote the court about his case, and his assistance with his defense by taking notes and performing legal research. *Id.* at 232. There, “[t]he thrust of the prosecution’s closing argument was that defendant was a ‘jailhouse lawyer’ and ‘manipulative’ because he had requested new attorneys and assisted in his own defense.” *Id.* According to the court, “[t]he strong implication of the prosecution’s argument was that these facts somehow tended to prove defendant’s guilt.” *Id.*

The *Sterling* court failed to see how the evidence was relevant to the issue of guilt and opined that “the prosecution’s argument tended to chill the defendant’s exercise of his constitutional right to the effective assistance of counsel[, which] includes the right to assist in his own defense[,]” and “show[ed] a calculated and pervasive strategy of penalizing the defendant for the exercise of his constitutional rights by characterizing defendant’s actions as manipulative abuses of the ‘system.’” *Id.*

The facts of Defendant’s case bear no resemblance to those present in *Sterling*. As evidence of this distinction, established Michigan authority makes clear, “Opportunity and motive to fabricate testimony are permissible areas of inquiry of any witness[,]” and can be addressed when they reflect the prosecution’s theory that defendant’s testimony appeared to reflect a carefully drawn explanation of what occurred. *People v. Buckley*, 424 Mich. 1, 15-16, 378 N.W.2d 432 (1985).

CONCLUSION

Defendant received a fair trial before a fair and impartial jury. The State asks this Court to affirm his convictions.

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 12-214(B) NMRA and Rule 12-213(A)(6), the State requests oral argument. The State believes oral argument will be helpful to a full airing of the issues presented by Defendant's claims and the State's response to those claims.

Respectfully submitted,

HECTOR H. BALDERAS
Attorney General

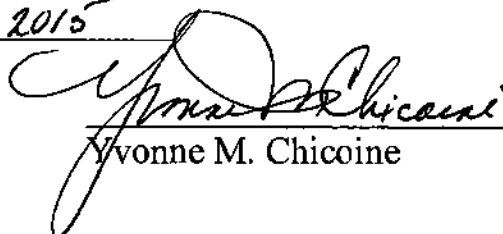


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Certificate of Service

I certify I delivered a copy of this pleading to counsel for Defendant pursuant to Rule 12-307 NMRA: A copy, addressed to Steven J. Forsberg, was deposited in the Appellate Public Defender's box located at the New Mexico Supreme Court on January 9, 2015



Yvonne M. Chicoine

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

vs.

N.M. S. Ct. No. 34,576

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

REPLY BRIEF

Oral Argument is requested pursuant to Rule 12-213(C)

Direct appeal taken from the Ninth Judicial District Court
Curry County, New Mexico
The Honorable Teddy L. Hartley, District Judge, Presiding

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SUPREME COURT OF NEW MEXICO
FILED

JAN 20 2015



EXHIBIT

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Statement of Compliance

This pleading was prepared using Microsoft Word, version 2002. The body of this brief is not fifteen pages in length. It was printed in Times New Roman, a proportionally-spaced typeface. Undersigned counsel certifies that it complies with Rule 12-213 NMRA.

Oral Argument Requested

Oral Argument is requested. Given the number and complexity of issues, oral argument will assist the court in ascertaining the factual and legal underpinnings of the defendant/appellant's appeal.

ARGUMENT

I. The District Court erred when it denied Mr. Ramirez a reevaluation of his competency to stand trial.

Rule 5-602(B)(2)(b) states that if competency is raised during trial the jury “shall” be instructed. The only exception is when a defendant has been previously found competent by a jury. Mr. Ramirez has never been found competent by a jury, thus the exception does not apply.

Similarly, 5-602(C) states that upon motion and good cause shown the court “shall” order a mental examination of the defendant. Rule 5-602(B)(2)(b), regarding jury instruction if competency is raised during trial, is additional to the other rules regarding competency, it does not replace them.

The defense agrees with the state that assertions of incompetency must be substantiated and the defendant bears the burden of doing so. [AB 29] The purpose of permitting a mental examination is to provide the defendant with an opportunity to do just that – meet his burden. Without a *timely* mental examination an incompetent defendant is left with only his behavior and his counsel’s assertions to show incompetency. The prosecution, however, can claim that counsel is making a frivolous motion and that the client is faking. [AB *passim*] Without an opportunity for an examination a defendant is unlikely to prevail, even with a meritorious claim.

The state cites from evaluations that took place in 2008 and 2009. [AB 11, 27] However Mr. Ramirez's trial, and the motion for an evaluation, were in the fall of 2013. While there is no bright-line rule regarding the timeliness of evaluations, the passage of years would tend to make the earlier evaluations far less probative. The state also uses the term "personality style" to describe Mr. Ramirez's behavior. [AB 10, 11] The doctor testified that Mr. Ramirez had a "personality disorder." The difference between a 'style' and a 'disorder' lies at the root of understanding Mr. Ramirez's behavior and possible incompetence.

As the answer brief points out, one of the state's evaluators stated that "she believed if Defendant had access to the Diagnostic and Statistical Manual of Mental Disorders (DSM) he would decide he had every psychiatric condition it identified." [AB 8] Curiously, appellate defense counsel agrees that he probably would, even though to do so would make no sense and would be unlikely to convince anyone that he (Mr. Ramirez) really had literally hundreds of psychiatric disorders. What the state would describe as a cunning plot is actually an example of how ill Mr. Ramirez is.

Similarly, what the state describes as Mr. Ramirez's understanding of "the value of the appellate record" can be more properly interpreted as his desperate attempt to recite his own story, not understanding nor trusting the trial process (or his attorney) to adequately convey what he believed (however erroneously) was

vital information. Mr. Ramirez, at one point, asked the judge, in front of the jury, “Who can I ask if there’s questions that I have personally that I want to let the jury know?” This exemplifies his lack of understanding of how a trial worked. [BIC 20]

The state would have the courts impose a “catch-22” situation where if an incompetent defendant says nothing there is no record and his competency challenge fails, but if he says something it means he is making an appellate record and thus his competency challenge fails.

There was more than “minimal or no evidence” of incompetency and thus Mr. Ramirez should have been afforded an opportunity to undergo a mental evaluation. *State v. Flores*, 2005-NMCA-135, ¶ 20, 138 N.M. 636 (citation omitted).

II. Mr. Ramirez received ineffective assistance of counsel.

The defense agrees that should the court find insufficient evidence of ineffective assistance of counsel on direct appeal, Mr. Ramirez should be permitted to raise the issue via habeas proceedings. *See State v. Dilallo*, No. 30,057 (N.M. Ct.App. July 28, 2010) (non-precedential) (finding that habeas was an appropriate venue when ineffective assistance was claimed after defendant’s attorney withdrew a request for an evaluation). The defense would point out that in *Dilallo* the court of appeals stated that even if her attorney had withdrawn the evaluation request,

“[defendant] could have either directly asked for an independent evaluation” or asked her doctor specific questions. According to the state’s arguments, however, a defendant actually doing so would be demonstrating their mastery of legal process and undermining their request merely by making it.

III. Deputy Loomis’s comment on Mr. Ramirez’s silence.

The defense stands on the brief-in-chief in this matter.

IV. Jury observation of defendant in shackles.

The defense stands on the brief-in-chief in this matter.

V. Evidence regarding prior unrelated acts.

The defense stands on the brief-in-chief in this matter.

VI. Improper cross-examination questions by the prosecution.

The state argues that the brief-in-chief “suggests the law carves out certain relevant topics prosecutors cannot address when impeaching or challenging the credibility of testifying defendants.” That is correct. One common example is that a prosecutor cannot use a defendant’s use of his Fifth Amendment right to remain silent against him. *See, e.g., Doyle v. Ohio*, 426 U.S. 610 (1976), *State v. DeGraff*, 2006-NMSC-011, ¶ 12, 139 N.M. 211. The state can chill a defendant’s constitutional rights by highlighting the defendant’s exercise of a constitutional right and thereby suggest that the jury draw a negative inference. *See, e.g., United States v. Jackson*, 390 U.S. 570, 581-2 (1968).

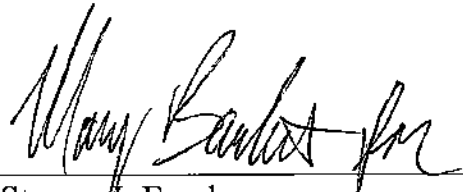
Allowing prosecutors to imply that a defendant is guilty because he sought to inform himself about the law chills defendant's right to assist in his own defense. "The trial court, mindful of the dual capacity in which he appears, should limit the cross-examination where its legitimate probative value on the credibility of the accused as a witness seems obviously outweighed by its illegitimate tendency, effect, and often purpose, to prejudice him as a defendant." *State v. Holden*, 1941-NMSC-017, ¶ 46, 45 N.M. 147. Drawing a negative inference from a defendant's attempt to understand the law is akin to drawing a negative inference to his retention of legally trained counsel and any probative value is outweighed by its illegitimate effect.

CONCLUSION

WHEREFORE Mr. Ramirez prays the Court reverse and remand for the remedies set in the brief in chief.

Respectfully submitted,

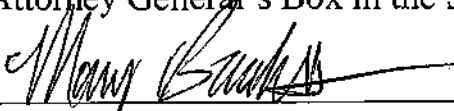
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief was served by hand delivery to the Attorney General's Box in the Supreme Court this 20th day of January, 2015.



New Mexico Department of the Public Defender

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: _____

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

NO. S-1-SC-34576

ALBERT JOSE RAMIREZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Teddy L. Hartley, District Judge

Bennett J. Baur, Chief Public Defender

Steven James Forsberg, Assistant Appellate Defender

Albuquerque, NM

for Appellant

Hector H. Balderas, Attorney General

Yvonne M. Chicoine, Assistant Attorney General

Santa Fe, NM

for Appellee

SUPREME COURT OF NEW MEXICO
FILED

DEC 1 2016



EXHIBIT

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DECISION

MAES, Justice.

{1} In Albert Jose Ramirez' (Defendant) first appeal to this Court, we reversed Defendant's conviction and remanded to the district court for further proceedings because the district court failed to ascertain on the record that Defendant's plea was knowing, intelligent, and voluntary. *See State v. Ramirez*, 2011-NMSC-025, ¶ 21, 149 N.M. 698, 254 P.3d 649. Following the remand, Defendant was found competent to stand trial. A jury convicted Defendant of first-degree willful and deliberate murder and tampering with evidence. The district court sentenced Defendant to life imprisonment plus six years.

{2} In his direct appeal, Defendant raises seven issues and seeks reversal of his convictions and a remand for a new trial. This Court exercises appellate jurisdiction where life imprisonment has been imposed. *See* N.M. Const. art. VI, § 2; *see also* Rule 12-102(A)(1) NMRA (2000). We affirm the district court's judgment, sentence, and commitment. Because Defendant raises no questions of law that New Mexico precedent does not already sufficiently address, we issue this nonprecedential decision pursuant to Rule 12-405(B)(1) NMRA.

I. FACTS AND PROCEDURAL HISTORY

1 {3} Defendant went to his mother's house on July 12, 2007, after calling the house
2 30 to 40 times with no answer. Defendant believed that his mother's live-in
3 boyfriend, Eladio Robledo, was preventing Defendant's mother from helping
4 Defendant because Robledo "liked to see [Defendant] suffering." After checking the
5 front door and not getting an answer, Defendant went to the back of the house and
6 followed Robledo as he left the house and entered the garage.

7 {4} After an argument ensued between the two men, Defendant shot Robledo and
8 chased him to the front of the house. When Robledo fell, Defendant stepped over him
9 and shot him twice in the head. Sam Saiz, a neighbor, and Grace Finkey, a passing
10 motorist, both witnessed the Defendant shoot Robledo. Defendant then disposed of
11 his gun and the denim shorts he was wearing in a dumpster. The State charged
12 Defendant with one count of willful and deliberate murder and two counts of
13 tampering with evidence. Defendant entered a guilty plea and appealed his
14 conviction to this Court.

15 {5} In his first appeal to this Court, we held that Defendant's guilty plea was not
16 entered into voluntarily because the district court failed to ascertain on the record that
17 Defendant's plea was knowing, intelligent, and voluntary. *See Ramirez*,
18 2011-NMSC-025, ¶ 21. We reversed the district court's judgment of conviction and

1 remanded for further proceedings. *See id.*

2 {6} In September 2011, following the remand order from this Court, the district
3 court ordered Defendant to undergo a third confidential forensic evaluation to
4 determine his competency to stand trial. The forensic evaluator, Dr. Richard T. Fink,
5 was not able to render an opinion at that time because Defendant refused to
6 communicate with him. On other occasions, Defendant had refused to talk to his
7 counsel and to the district court. The district court ordered a fourth forensic
8 evaluation after which Dr. Fink determined that Defendant was competent to stand
9 trial. Based on Dr. Fink's report, the district court found that Defendant was
10 competent to stand trial.

11 {7} In October 2013, following a jury trial, Defendant was found guilty of
12 first-degree murder and two counts of tampering with evidence. The district court
13 imposed a sentence of life imprisonment plus six years. We include additional facts
14 in the discussion of Defendant's issues on appeal.

15 {8} In a direct appeal of his conviction to this Court, Defendant argues: (1) the
16 district court erred when it denied Defendant a reevaluation of his competency to
17 stand trial; (2) Defendant received ineffective assistance of counsel; (3) there was
18 improper commentary on Defendant's right to silence; (4) Defendant was prejudiced

1 by the jury seeing his leg restraints; (5) the court abused its discretion in admitting
2 prior bad acts; (6) the court abused its discretion by not declaring a mistrial; and (7)
3 there was insufficient evidence to support two counts of tampering with evidence.
4 We do not address the issue of sufficiency of the evidence to support tampering
5 because it has been abandoned by counsel. *See State v. Correa*, 2009-NMSC-051,
6 ¶ 31, 147 N.M. 291, 222 P.3d 1.

7 **II. STANDARD OF REVIEW**

8 (9) Because the standard of review for each issue presented is distinct, we address
9 each standard in the corresponding discussion section.

10 **III. DISCUSSION**

11 **A. The district court did not err when it denied Defendant a reevaluation of** 12 **his competency to stand trial**

13 (10) Defendant argues that the district court erred when it denied his motion prior
14 to trial and two motions during trial for a reevaluation of his competency to stand
15 trial. The State argues that at no time did Defendant meet the burden of proof
16 necessary for another court-ordered evaluation.

17 **1. Standard of Review**

18 (11) Defendant argues that the district court's denial of a reevaluation of

1 competency denied Defendant due process of law and is therefore subject to de novo
2 review. The State argues that the standard of review for competency determinations
3 is abuse of discretion because the district court afforded Defendant all the due process
4 that was required. Additionally, the State argues that Defendant did not preserve his
5 claim that the court abused its discretion in finding that Defendant was competent.

6 {12} De novo review is applied when the district court fails to provide a defendant
7 notice or an opportunity to be heard on the issue of his competency. *See, e.g., State*
8 *v. Gutierrez*, 2015-NMCA-082, ¶ 7, 355 P.3d 93 (applying de novo review because
9 defendant was deprived of due process where the judge held a competency hearing
10 on its own motion, without notice or an opportunity to be heard by the parties, and
11 entered a finding that Defendant was competent); *State v. Montoya*,
12 2010-NMCA-067, ¶¶ 10-11, 15-16, 148 N.M. 495, 238 P.3d 369 (applying de novo
13 review because judge's refusal to hear the defense's position on competency and
14 immediate continuation of trial without consideration of any evidence regarding
15 defendant's competency was a violation of due process).

16 {13} However, we review the denial of a motion for a competency evaluation for an
17 abuse of discretion. *State v. Herrera*, 2001-NMCA-073, ¶ 31, 131 N.M. 22, 33 P.3d
18 22. "A trial court abuses its discretion when a ruling is clearly against the logic and

effect of the facts and circumstances of the case.” *State v. Lasner*, 2000-NMSC-038, ¶ 16, 129 N.M. 806, 14 P.3d 1282 (internal quotations and citation omitted). In applying this standard, we view the evidence in the light most favorable to the judge’s decision. *See State v. Lopez*, 1978-NMSC-060, ¶ 7, 91 N.M. 779, 581 P.2d 872.

2. The district court did not abuse its discretion in denying Defendant’s motion for a subsequent evaluation of competency

(14) Because a defendant is presumed competent to stand trial, he bears the burden of demonstrating incompetency by a preponderance of the evidence. *See State v. Chavez*, 2008-NMSC-001, ¶ 11, 143 N.M. 205, 174 P.3d 988; *see also State v. Rael*, 2008-NMCA-067, ¶ 6, 144 N.M. 170, 184 P.3d 1064 (citation omitted). In New Mexico, the procedure for determining a defendant’s competency to stand trial is defined in NMSA 1978, Sections 31-9-1 through 31-9-4 (1967, as amended through 1999) and Rule 5-602 NMRA. Rule 5-602(B)(1) provides: “[t]he issue of the defendant’s competency to stand trial may be raised . . . at any stage of the proceedings.” Section 31-9-1 states that “[w]henver it appears that there is a question as to the defendant’s competency to proceed in a criminal case, any further proceeding in the cause shall be suspended until the issue is determined.” Once an issue of competency to stand trial has been raised, the judge must determine whether

1 there is “evidence which raises a reasonable doubt as to the defendant’s competency
 2 to stand trial.” Rule 5-602(B)(2); *see also State v. Noble*, 1977-NMSC-031, ¶ 7, 90
 3 N.M. 360, 563 P.2d 1153. “In deciding the reasonable-doubt question, the judge
 4 weighs the evidence and draws his or her own conclusions from that evidence.” *State*
 5 *v. Duarte*, 1996-NMCA-038, ¶ 13, 121 N.M. 553, 915 P.2d 309 (citation omitted).
 6 {15} “If a reasonable doubt as to the defendant’s competency to stand trial is raised
 7 *prior to trial*, the court shall order the defendant to be evaluated as provided by law.”
 8 Rule 5-602(B)(2)(a) (emphasis added). “If the issue of the defendant’s competency
 9 to stand trial is raised *during trial*, the trial jury shall be instructed on the issue.”
 10 Rule 5-602(B)(2)(b) (emphasis added). “That is, if there is no evidence raising a
 11 reasonable doubt, the judge must decide whether a defendant is competent to stand
 12 trial. If there is such evidence, other options become available . . . in Rule 5-
 13 602(B)(2)(a)-(b), and the choice depends on when the issue is raised.” *Rael*, 2008-
 14 NMCA-067, ¶ 22. Because the issue of defendant’s competency was raised both
 15 before and during trial, we must analyze Defendant’s claims under both Rule
 16 5-602(B)(2)(a) and Rule 5-602(B)(2)(b). *See Rael*, 2008-NMCA-067, ¶ 18.

17 **a. Prior to trial, Defendant did not establish a reasonable doubt as to his**
 18 **competency**

{16} Defendant makes two arguments. First, Defendant argues that he raised reasonable doubt as to his competency when he spoke directly to the court and asked for a fifth forensic evaluation. One week prior to trial, despite the finding of competency by Dr. Fink in January 2013, Defendant spoke directly to the court, though he was represented by counsel, and asked for a fifth forensic evaluation to determine his competency. Defendant argued that a new evaluation would show he was suffering from “psychosomatic delusions and hallucinations and severe depression and anxiety.” The judge listened to Defendant’s request and then denied it.

{17} This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported declaration against competency made prior to trial rose to the level of reasonable doubt. In that case, just before trial, the defendant’s counsel asked the court to find that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant’s counsel cited her own experience with the defendant as the basis of the request, stating her belief that his condition had deteriorated because he had been held in isolation since the competency hearing. *See id.* ¶ 8. The Court held that while “a court may consider defense counsel’s observations and opinions . . . those

1 observations and opinions alone cannot trigger reasonable doubt about the
2 defendant's competency." *Id.* ¶ 29. The Court also concluded that the testimony of
3 experts is not required to support a contention of incompetency, but "[i]nstead, a
4 defendant could offer an affidavit from someone who has observed the defendant and
5 formulated an opinion about his or her competency, such as a corrections officer or
6 defense counsel's paralegal." *Id.* ¶ 31.

7 (18) Here, unlike in *Flores*, it was the Defendant, rather than his counsel, who
8 argued his opinion as to his competency. Nevertheless, Defendant did not argue that
9 he was unable to understand the proceedings or assist his counsel, but instead stated
10 that he suffered from mental illness. The standard set forth in *Flores* applies equally
11 to a defense counsel's observations of his client's competency as to the Defendant's
12 freely given statements to the court about his competency. *See Flores*, 2005-NMCA-
13 135, ¶ 29 ("We read the foregoing New Mexico cases to say that a court may consider
14 defense counsel's observations and opinions, but that those observations and opinions
15 alone cannot trigger reasonable doubt about the defendant's competency."); *see also*
16 *State v. Najar*, 1986-NMCA-068, ¶ 12, 104 N.M. 540, 724 P.2d 249 ("When a
17 defendant or his counsel asserts the doubtfulness of that competency, the assertions
18 must be substantiated.") Accordingly, Defendant did not properly substantiate his

1 assertion of incompetency.

2 {19} Second, Defendant argues that because he had previously been found
3 incompetent and eight months had passed since the most recent finding of
4 competency by an evaluator, he was entitled to a new evaluation because of the
5 possibility that a person can decompensate. However, the Court of Appeals has held
6 that while an “interval between the assessment and trial may well justify a motion for
7 further evaluation . . . the burden remains on [d]efendant to raise a reasonable doubt
8 as to competence with substantiated claims.” *Flores*, 2005-NMCA-135, ¶ 32. Again,
9 Defendant’s general assertions that a defendant *can* decompensate did not provide
10 support that this Defendant *did* decompensate. *See Flores*, 2005-NMCA-135, ¶¶ 28-
11 29. Accordingly, the district court properly relied on its determination and the
12 previous evaluation eight months prior to deny Defendant’s request for a new
13 evaluation.

14 {20} The burden remains on Defendant to raise a reasonable doubt as to competency
15 with substantiated claims. Because Defendant did not properly substantiate his
16 assertion of incompetency, the district court did not abuse its discretion in denying
17 Defendant’s pretrial motion for a fifth forensic evaluation.

18 **b. During trial, defense counsel did not establish reasonable doubt as to**

1 **competency**

2 {21} During trial, Defendant complained that he was too physically ill to stand trial.
3 Defense counsel asked for a recess to allow Defendant to undergo a physical
4 evaluation by a doctor at the detention center. The court refused to delay trial, but
5 allowed a nurse to come into the courtroom to examine the Defendant. The nurse sent
6 a note to the court stating that the Defendant was not ill and that he was physically
7 able to participate in the trial. The court ordered the trial to continue.

8 {22} Later that morning, defense counsel moved the court for another recess and an
9 order for an immediate reevaluation of his client's competency, as Defendant told him
10 "he didn't understand," "doesn't know how to behave," and was "not capable of
11 assisting [counsel] in his defense." Defense counsel reported not knowing whether
12 Defendant was malingering or decompensating, or whether Defendant was receiving
13 his medications. Defense counsel told the court that he could not effectively
14 represent his client as he was labile, crying, interrupting, and making statements
15 contrary to his interests during trial. The State objected, arguing that there was no
16 good faith basis to require another competency evaluation particularly since
17 Defendant had a history of malingering. The State also reminded the court that a
18 nurse examined Defendant and concluded that despite his complaints, he was well

1 enough to participate in the trial and this was further evidence of his pattern of
2 malingering. The court heard more arguments from the attorneys and denied the
3 motion.

4 {23} That afternoon, defense counsel renewed his motion for a recess to have
5 Defendant reevaluated. Defense counsel indicated his concern that Defendant was
6 not competent to make the choice whether or not he should testify. The court advised
7 Defendant of his right. Defendant stated that he was mentally imbalanced and he
8 wanted the jury to be told about his medical problems. The court found that the
9 concerns represented personal issues not rising to the level of incompetence and
10 denied the motion.

11 {24} Rule 5-602(B)(2)(b) requires that “[i]f the issue of the defendant’s competency
12 to stand trial is raised *during trial*, the trial jury shall be instructed on the issue.”
13 (emphasis added). The reasonable doubt requirement “is implied” under Rule
14 5-602(B)(2)(b) when the issue of competency is reraised at trial. *Rael*,
15 2008-NMCA-067, ¶ 22 (“[I]f a requirement of reasonable doubt were not read into
16 Rule 5-602(B)(2)(b), any defendant would be able to raise the issue of competency
17 and have the jury decide it even in the absence of the slightest bit of evidence that the
18 defendant was incompetent. Such a result would be contrary to our well-established

1 guidelines regarding the interpretation of Supreme Court rules.”). However, in the
2 absence of reasonable doubt, the district court need not submit the issue to the jury.
3 *See id.* ¶¶ 22–23, 25. As such, assertions as to the question of incompetency must be
4 properly substantiated to show reasonable doubt. *See Flores*, 2005-NMCA-135, ¶ 29
5 (“[A] court may consider defense counsel’s observations and opinions, but that those
6 observations and opinions alone cannot trigger reasonable doubt about the
7 defendant’s competency.”).

8 {25} Here, defense counsel merely stated his beliefs that Defendant was not capable
9 of assisting in his own defense and that Defendant did not have the capacity to
10 determine whether or not to testify. In response, throughout the trial, the judge did
11 everything within his power, under the rules, to address the Defendant’s concerns
12 with his physical condition and his inability to understand the proceedings, allowing
13 a nurse to examine him during the trial and consistently explaining to the Defendant
14 what was happening. Accordingly, the district court did not abuse its discretion in
15 denying Defendant’s request for a forensic evaluation during trial because relying
16 only upon his own observations, defense counsel failed to substantiate his assertions.

17 {26} Further, had the district court found reasonable doubt as to Defendant’s
18 competency to stand trial, Defendant would not have been entitled to a competency

1 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
2 only recourse is to request a jury instruction on the issue of competency. *See* Rule 5-
3 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
4 on competency to the court or objecting to the instructions as offered. *See State v.*
5 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 (“Defendant did not
6 offer an instruction on competence, nor did he object to the instructions given the
7 jury. Therefore, this issue was not properly preserved for appeal.”).

8 **B. Defendant did not receive ineffective assistance of counsel**

9 {27} Defendant's second argument is that he was denied effective assistance of
10 counsel because defense counsel “lacked the necessary assistance of [Defendant]
11 himself”; failed to “‘seek the assistance of necessary experts,’ and if more money was
12 required to seek such assistance on an urgent basis counsel should have requested it”
13 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
14 motions to determine competency, resulting in prejudice to Defendant. Counsel has
15 abandoned the claims that trial counsel failed to call other witnesses or made
16 promises to the Defendant because these claims are unsupported by the record. As
17 such, we decline to review these claims.

18 {28} One week prior to trial, the district court denied Defendant's motion to appoint

1 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
2 counsel informed the court of his decision not to call a witness on the record, as it was
3 against Defendant's wishes. Defendant then addressed the court, against counsel's
4 advice, about how his defense had been limited, how his mental illnesses affected
5 him, the amount of media his case was receiving, the quality of his attorney's
6 representation, motions he wanted filed, and other issues he indicated that he would
7 present in his appeal.

8 {29} Defendant then demanded to be the first defense witness so he could
9 communicate his defense. During his direct examination, Defendant refused to
10 answer many questions directly saying he wanted to "explain everything." Defendant
11 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
12 the Defendant and recess the trial. Later, after the parties rested, Defendant had
13 another outburst, complaining that he had a right to know what the jury instructions
14 would be so that he could file motions. The court told Defendant that he was being
15 well-represented and the instructions were fair.

16 {30} At Defendant's sentencing hearing, Defendant complained to the court that his
17 defense counsel had failed to effectively represent him and that he did not receive a
18 fair trial. Defendant argued that the jury would not have convicted him had it fully

1 understood that he was the victim. The district court assured Defendant that he had
2 received excellent representation and pronounced the sentence.

3 {31} “This Court has repeatedly stated that ineffective assistance of counsel claims
4 are best served through habeas corpus proceedings so that an evidentiary hearing can
5 take place on the record.” *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949
6 (citation omitted). “Generally, only an evidentiary hearing can provide a court with
7 sufficient information to make an informed determination about the effectiveness of
8 counsel.” *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d
9 776 (“A record on appeal that provides a basis for remanding to the trial court for an
10 evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such
11 claims are heard on petition for writ of habeas corpus . . .”); *State v. Telles*, 1999-
12 NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the “proper avenue of
13 relief [from ineffective assistance of counsel] is a post-conviction proceeding that can
14 develop a proper record”).

15 {32} Though the district court repeatedly observed that defense counsel was
16 providing excellent representation to Defendant, the court did not hold an evidentiary
17 hearing. Therefore, the record before us is insufficient to establish that defense
18 counsel was ineffective or that the decisions made were a plausible trial tactic or

1 strategy. Accordingly, we reject this claim without prejudice to Defendant's ability
2 to bring such a claim via habeas corpus proceedings.

3 **C. The district court did not abuse its discretion denying a mistrial based on**
4 **Deputy Loomis' commentary on Defendant's silence**

5 {33} Defendant's third issue is that the court erred in denying his motion for a
6 mistrial based on an alleged improper comment about Defendant's silence after he
7 had been Mirandized. The State responds that there was no error because the court
8 offered a curative instruction and the Defendant failed to take advantage of it.

9 {34} At trial, in response to a general question about his involvement in the case,
10 Deputy Sandy Loomis explained that he had "tried to interview" Defendant when he
11 went to Defendant's home as part of his follow-up investigation. Outside the
12 presence of the jury, defense counsel requested that the court declare a mistrial on the
13 basis that Deputy Loomis inappropriately commented on Defendant's Fifth
14 Amendment right to be silent. The State argued that no error had occurred and if
15 anything, an instruction could cure any effect the statement might have had on the
16 jury. The district court found that neither the prosecution's question, nor Deputy
17 Loomis' statement, suggested Deputy Loomis went to the home in search of a post-
18 Miranda statement from Defendant. Rather, the deputy's testimony suggested an

1 explanation of the deputy's routine role in the case. The district court denied the
2 motion but offered to give a curative jury instruction, which the Defendant refused.

3 {35} A district court's denial of a mistrial is reviewed for an abuse of discretion. *See*
4 *State v. Samora*, 2013-NMSC-038, ¶ 22, 307 P.3d 328. The legal question of whether
5 there has been an improper comment on a defendant's silence is reviewed de novo.
6 *See State v. Pacheco*, 2007-NMCA-140, ¶ 8, 142 N.M. 773, 170 P.3d 1011.

7 {36} “[T]he State is generally prohibited from impeaching a defendant's testimony
8 with evidence of his silence after receiving Miranda warnings.” *See Pacheco*, 2007-
9 NMCA-140, ¶ 9. “A two-step analysis is applied. First, we must determine whether
10 the language of the prosecutor's questions on cross-examination . . . were such that
11 the jury would naturally and necessarily have taken them to be comments on the
12 exercise of the right to remain silent.” *Id.* ¶ 12 (internal quotation marks and citations
13 omitted). “If the prosecutor's questions or statements constituted improper
14 commentary on Defendant's silence, we must then determine whether there is a
15 reasonable probability that the error was a significant factor in the jury's deliberations
16 in relation to the rest of the evidence before them.” *Id.* (internal quotation marks
17 omitted). Furthermore, in reviewing inadvertent remarks made by witnesses,
18 generally, “the trial court's offer to give a curative instruction, even if refused by the

1 defendant, is sufficient to cure any prejudicial effect.” *Samora*, 2013-NMSC-038, ¶
2 22.

3 {37} We have previously addressed this issue in *State v. Baca*, 1976-NMSC-015, 89
4 N.M. 204, 549 P.2d 282. There, the Defendant argued that the prosecutor asked the
5 investigating officer if he “at any time [interviewed] the defendant.” *Id.* ¶ 2. The
6 officer responded, in part, “I then explained a waiver of rights to him and he told me
7 at the time he did not wish to talk to me, he wanted an attorney before he said
8 anything.” *Id.* We characterized that testimony as “unsolicited, and possibly
9 inadvertent,” holding that “[we] would draw the line between those comments which
10 can be directly attributed to the prosecutor and those comments incorporated within
11 the testimony of a witness.” *Id.* ¶¶ 3, 5. *See also State v. Wildgrube*, 2003-NMCA-
12 108, ¶¶ 23-24, 134 N.M. 262, 75 P.3d 862 (holding that prosecutor’s reference to a
13 police officer’s unsolicited comment regarding defendant’s post-Miranda silence was
14 not misconduct requiring a reversal).

15 {38} Here, the officer’s comments were incorporated within his testimony
16 establishing his connection to the case and his reliability as a witness. The deputy did
17 not mention that his attempt to interview Defendant had failed because Defendant
18 invoked his right to remain silent, but simply described how he completed his follow-

up investigation. The record does not demonstrate an intent by the deputy to comment specifically on Defendant's silence, nor that this comment was directly attributable to the prosecutor's question. Due to the additional evidence which inculpated Defendant, such as eyewitness testimony of the event, we cannot say that there is a reasonable probability that the deputy's testimony was a significant factor in the jury's mind when they convicted Defendant. Accordingly, the district court did not abuse its discretion in denying a mistrial.

D. Defendant was not prejudiced by the jury seeing his leg restraints

{39} Defendant's fourth issue is that he was prejudiced when the jury saw his leg restraints when he stumbled as he stood up at one point during the first day of trial. However, he concedes that he did not ask the court to make a finding of prejudice or declare a mistrial and asks this Court to review the possibility that the jury saw his leg restraints for fundamental error. The State argues that the factual record does not support Defendant's contention that the jury saw him shackled because all the parties agreed that the table skirt blocked the jury's view.

{40} "To preserve a question for review it must appear that a ruling or decision by the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not properly preserved, we consider the claim under the fundamental error exception

1 to the preservation rule. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M.
2 513, 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant
3 handcuffed for fundamental error because the defendant did not request a mistrial, did
4 not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*,
5 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2)
6 NMRA).

7 {41} In reviewing the fundamental error exception to the preservation rule, we must
8 first determine whether an error occurred and if so, whether the error was
9 fundamental. *See id.* Fundamental error "must be such error as goes to the
10 foundation or basis of a defendant's rights or must go to the foundation of the case
11 or take from the defendant a right which was essential to his defense and which no
12 court could or ought to permit him to waive." *State v. Johnson*, 2010-NMSC-016, ¶
13 25, 148 N.M. 50, 229 P.3d 523 (citation omitted). "Fundamental error only applies
14 in exceptional circumstances when guilt is so doubtful that it would shock the judicial
15 conscience to allow the conviction to stand." *Id.*

16 {42} In *Holly*, we held that no fundamental error occurred where it was unclear
17 whether the juror had actually seen the defendant in handcuffs, and if they had,
18 whether it was more than "inadvertent or insignificant exposure." 2009-NMSC-004,

¶ 42. Similarly, in *Johnson*, because there was no indication that the jury was aware the defendant was wearing leg irons during a trial, the presumption of innocence was not violated, the dignity of the judicial process was not affected, and the district court did not commit fundamental error. 2010-NMSC-016, ¶¶ 25, 29.

(43) Here, defense counsel concedes that a black skirt on the table shielded the jury's view of Defendant's shackles and that he did not ask the court to make a finding of prejudice or declare a mistrial. Because it is unclear whether the jury saw the leg restraints and if they did, there is no evidence that it was anything other than inadvertent or insignificant exposure, this case is not the exceptional type that goes to the violation of the foundation of presumption of innocence. Further, this case does not shock the conscience as Defendant's guilt is supported by substantial evidence in the record, including eyewitness testimony and evidence of Defendant's motive and a pattern of conduct toward Robledo. *See State v. Trujillo*, 2002-NMSC-005, ¶ 60, 131 N.M. 709, 42 P.3d 814 (holding that because the Court found "substantial evidence in the record to support Defendant's convictions, and because Defendant failed to demonstrate circumstances that 'shock the conscience' or show a fundamental unfairness," no fundamental error existed). Accordingly, there was no fundamental error by the district court.

1 **E. The court did not abuse its discretion in admitting prior bad acts**

2 {44} Defendant's fifth issue is that the district court erred in admitting evidence of
3 prior acts, in violation of Rule 11-402 NMRA. Defendant argues that cumulatively,
4 the introduction of this evidence created the impression that Defendant was
5 troublesome and a lawbreaker. The State argues that the district court did not err in
6 allowing the State to present evidence of Defendant's animus toward the victim or in
7 cross-examining Defendant about previous acts of violence. Therefore, the State
8 argues that the evidence was properly admitted to show motive and pattern of
9 conduct.

10 {45} When a district court's evidentiary ruling is properly preserved for review, we
11 examine the ruling under an abuse of discretion standard. *See State v. Flores*, 2010-
12 NMSC-002, ¶ 25, 147 N.M. 542, 226 P.3d 641. "An abuse of discretion occurs when
13 the ruling is clearly against the logic and effect of the facts and circumstances of the
14 case." *Id.* (internal quotation marks omitted). We will not say that the district court
15 "abused its discretion by its ruling unless we can characterize it as clearly untenable
16 or not justified by reason." *Id.* (internal quotation marks and citation omitted).

17 **1. Evidence of the trespass order, broken windshield, and broken window**

1 {46} First, Defendant argues that the court improperly admitted testimony about a
2 “no trespass” order Robledo had issued to Defendant, in violation of Rule 11-404.
3 The State responds that evidence regarding the “no trespass” order was relevant and
4 admissible because it demonstrated a pattern of conduct toward Rohledo from which
5 the jury could infer that Defendant acted with deliberate intention to kill Robledo.
6 In addition, the State argues that Defendant did not object to testimony about the
7 order at trial, only to the admission of the actual trespass order.

8 {47} At trial, the prosecution sought to elicit testimony that three months prior to the
9 murder, Rohledo had obtained a criminal trespass notice harring Defendant from
10 returning to the home. The district court had previously ruled, prior to trial, that
11 evidence of the no-trespass order issued against Defendant by Robledo was
12 admissible as it was relevant to proving deliherate intent. During trial, defense
13 counsel objected to the admission of the trespass order. The court, finding that
14 testimony about the order was admissihle as to motive, overruled the objection.

15 {48} Second, Defendant argues that the court improperly admitted testimony about
16 a prior incident involving a broken windshield. The State argues that evidence
17 regarding the broken window was relevant and admissible because it demonstrated

1 a pattern of conduct toward Robledo from which the jury could infer that Defendant
2 acted with deliberate intention to kill Robledo.

3 {49} At trial, the prosecution sought to admit evidence that approximately one
4 month before the killing, Defendant broke the windshield of Robledo's car because
5 he "got mad." The defense objected to the testimony at trial regarding the broken
6 windshield, claiming it was "uncharged conduct." The district court allowed the
7 testimony finding that it demonstrated Defendant's pattern of conduct toward
8 Robledo.

9 {50} Third, the court admitted testimony about a police investigation of a broken
10 window at Robledo's house, although the court did not allow the witness to testify as
11 to who had broken the window. The State argues that Defendant failed to preserve
12 any argument regarding the broken window because he did not move to have the
13 testimony stricken after the district court sustained the objection.

14 {51} At trial, the prosecution sought to introduce testimony that a month before the
15 killing, Defendant's mother had filed a police report after Defendant had broken the
16 front window of Robledo's home when no one would answer the door. The
17 prosecutor asked the responding officer if he knew who had broken the window.
18 Defense counsel objected, arguing that the responding officer's testimony as to who

1 broke the window was inadmissible hearsay testimony and violated Defendant's
2 confrontation rights. The court sustained the objection. Despite the limitation on the
3 prosecution, the Defendant subsequently testified on cross-examination that after no
4 one answered the door, he had broken the window by knocking on it as it was
5 "flimsy." On appeal, Defendant argues that all of the testimony about the broken
6 window, including the filing of the police report, was improper.

7 {52} "Evidence of a crime, wrong, or other act is not admissible to prove a person's
8 character in order to show that on a particular occasion the person acted in accordance
9 with the character." Rule 11-404(B)(1) NMRA. However, "[t]his evidence may be
10 admissible for another purpose, such as proving motive, opportunity, intent,
11 preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule
12 11-404(B)(2).

13 {53} The procedure for admitting evidence under Rule 11-404(B) requires first,
14 identification of the "consequential fact to which the proffered evidence of other acts
15 is directed." *State v. Serna*, 2013-NMSC-033, ¶ 17, 305 P.3d 936 (internal quotation
16 marks and citation omitted). Second, the rule requires a demonstration of the other
17 acts' "relevancy to the consequential facts, and the material issue, such as intent, must
18 in fact be in dispute." *Id.* (internal quotation marks and citation omitted). Third, if

1 the evidence offered is of a crime other than the one charged, the other crime must
2 “have a real probative value, and not just possible worth on issues of intent, motive,
3 absence of mistake or accident, or to establish a scheme or plan.” *Id.* (citation
4 omitted). “[T]he rationale for admitting the evidence [must be] to prove something
5 other than propensity.” *Id.*; *see also State v. Martinez*, 1999-NMSC-018, ¶ 27, 127
6 N.M. 207, 979 P.2d 718 (“The list of permissible uses of evidence of other wrongs
7 in Rule 11-404(B) is intended to be illustrative rather than exhaustive, and evidence
8 of other wrongs may be admissible on alternative relevant issues so long as it is not
9 admitted to prove conformity with character.” (citation omitted)).

10 {54} Here, the evidence of the “no trespass” order, testimony about the broken
11 windshield, and the broken window was consequential to the determination of
12 whether Defendant had the intent to kill Robledo, an essential element of first-degree
13 murder. The State was not attempting to prove that Defendant acted in accordance
14 with his character, but rather that Defendant had motive and the intent to murder
15 Robledo because of their strained relationship. Such a purpose is permitted under
16 Rule 11-402 NMRA. *See, e.g., State v. Rojo*, 1999-NMSC-001, ¶ 47, 126 N.M. 438,
17 971 P.2d 829 (holding that evidence of the defendant’s and victim’s deteriorating
18 relationship and the specific actions surrounding her reason for rejecting the

1 defendant “directly addresse[d] the motivational theories presented at trial . . . [and
2 t]hus, the trial court did not abuse its discretion by admitting this evidence”); see
3 also *State v. Allen*, 2000-NMSC-002, ¶ 41, 128 N.M. 482, 994 P.2d 728 (holding that
4 “evidence of Defendant’s prior crime in 1982 was relevant to prove his motive for the
5 murder in the context of the aggravating circumstance of murdering a witness.”
6 (citations omitted)). Accordingly, we hold that the district court did not abuse its
7 discretion in admitting the evidence of Defendant’s prior acts.

8 **2. Evidence of the head-butt on an officer**

9 {55} Defendant argues that the district court erred in allowing the prosecution’s
10 inquiry during cross-examination about whether Defendant had head-butted a police
11 officer, arguing such evidence was “not connected by the prosecution in any manner
12 to killing of Mr. Robledo.” The State argues that Defendant testifying that Robledo
13 was the first aggressor opened the door to being cross-examined on specific instances
14 of conduct where Defendant was aggressive and violent, including the head-butt on
15 an officer.

16 {56} At trial, Defendant testified that on the day he shot Robledo, he went to his
17 mother’s house, saw Robledo, and they began arguing. Defendant claimed Robledo
18 struck him and hit him. Defendant also testified that Robledo “picked on” him, that

1 the Defendant had heard from his mother that Robledo had killed someone, and that
2 Robledo was not nice and not caring. Defendant stated that he did not plan to kill
3 Robledo, but that he was defending himself and knew that Robledo had a gun.
4 Defendant thought he was in danger when Robledo allegedly threatened to get his
5 pistol.

6 {57} On cross-examination, the prosecution asked the district court to allow
7 evidence of specific instances where the Defendant was aggressive, under Rule 11-
8 404(A)(2)(b)(ii) and Rule 11-405, because Defendant put forth evidence that
9 Robledo, the victim, was the first aggressor and had a violent character. Defense
10 counsel objected to the question, arguing that it did not satisfy any of the purposes of
11 Rule 11-404. The court overruled the objection. The district court granted the
12 prosecution's request to admit evidence of specific instances of conduct and allowed
13 the prosecution to ask the question. The prosecutor asked Defendant, "[i]sn't it true
14 that you have also head-butted a police officer?" Defense counsel, in order to
15 preserve the issue for appeal, renewed his objection.

16 {58} The Rules of Evidence contain an exception in criminal cases to the general
17 rule prohibiting character evidence: if a defendant offers evidence of a victim's
18 pertinent trait, the State can offer rebuttal "evidence of the defendant's same character

1 trait.” Rule 11-404(A)(2)(b)(ii). “When evidence of a person’s character is
2 admissible, it may be offered in the form of reputation or opinion evidence. *See* Rule
3 11-405(A). “On cross-examination of the character witness . . . inquiry into relevant
4 specific instances of the person’s conduct” are allowed. Rule 11-405(A). Or “when
5 a person’s character or character trait is an essential element of a charge, claim, or
6 defense, the character or trait may also be proved by relevant specific instances of
7 conduct.” Rule 11-405(B).

8 {59} While it is correct that the defendant who offers evidence of a victim’s
9 pertinent character trait (e.g., violence) opens the door to allow the prosecution to
10 offer evidence of the defendant’s same character trait, under Rules 11-404(A)(2)(b)
11 and 11-404(A)(2)(b)(ii) NMRA, the evidence that is admitted may only be reputation
12 or character evidence, unless the character trait is an essential element of the crime
13 charged. Here, Defendant offered evidence at trial that he shot Robledo in self-
14 defense because Robledo was the first aggressor. He supported this assertion by
15 offering evidence of Robledo’s character: that Robledo was a violent and aggressive
16 man who had killed a person. This was evidence of the victim’s “pertinent trait”: a
17 reputation for violence and aggression. By offering the evidence of Defendant’s
18 head-butt on an officer during cross-examination of Defendant, the State was offering

1 evidence that Defendant had the same traits for aggression and violence through an
2 inquiry into specific instances of Defendant's conduct. The evidence of head-butting
3 an officer is not reputation or opinion testimony. Nor is it proving an essential
4 element of the crime charged because violence is not a specific element of murder or
5 self-defense. *State v. Baca*, 1993-NMCA-051, ¶ 16, 115 N.M. 536, 540, 854 P.2d
6 363, 367 ("The victim's violent disposition is not an 'element' of the defense in the
7 strictest sense; rather, it is used circumstantially -- that is, to help prove that the
8 victim acted in the particular manner at the time of the incident in question.") It
9 seems that the information of Defendant head-butting an officer is being used only
10 to show Defendant's propensity for violence. And contrary to the State's argument,
11 under Rule 11-405(A) on cross-examination it is the specific instances of Robledo's
12 conduct that is allowed to rebut the testimony from Defendant of Robledo's
13 "pertinent trait." See Rule 11-405.

14 {60} Accordingly, it was error for the district court to admit the evidence of
15 Defendant's prior act of head-butting a police officer. Non-constitutional error is
16 harmless when there is no reasonable probability the error affected the verdict. *State*
17 *v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d 110. In the context of all the evidence

1 in the record as referenced in paragraphs 3 and 4, *supra*, this isolated error was
2 harmless and had no effect on the conviction.

3 **F. The district court did not abuse its discretion by not declaring a mistrial**
4 **based on questions about Defendant's legal research**

5 {61} Defendant's sixth issue is that the district court abused its discretion when it
6 denied Defendant's motion for a mistrial after the prosecutor cross-examined
7 Defendant about the amount of legal research he conducted. Defendant argues that
8 the prosecution's conduct shows a calculated and pervasive strategy of penalizing the
9 Defendant for the exercise of his constitutional rights by characterizing Defendant's
10 actions as manipulative abuses of "the system." The State argues that because
11 Defendant initially indicated that he was seeking to argue a defense of self-defense,
12 the prosecutor did not cross the line by asking about the amount of legal research
13 Defendant had conducted.

14 {62} During the cross-examination of Defendant, the prosecutor asked, "And you've
15 done a significant amount of legal research on how to get the jury to buy this?" The
16 defense objected and moved for a mistrial. The court directed the prosecution to lay
17 a foundation. The prosecutor asked Defendant, "Do you recall giving a lot of
18 requests to go to the law library to research how to beat your charges?" Defense

1 counsel objected a second time, arguing that the question rose to prosecutorial
2 misconduct, and again asked for a mistrial. The judge ruled that he would not allow
3 the questions about Defendant's research and would not declare a mistrial.

4 {63} We examine a district court's denial of a motion for mistrial based on an
5 allegation of prosecutorial misconduct under an abuse of discretion standard. *See*
6 *Allen*, 2000-NMSC-002, ¶ 95 ("the trial court is in the best position to evaluate the
7 significance of any alleged prosecutorial errors" (citation omitted)); *see also State v.*
8 *Ramos-Arenas*, 2012-NMCA-117, ¶ 1, 290 P.3d 733. "An isolated, minor
9 impropriety ordinarily is not sufficient to warrant reversal . . . because a fair trial is
10 not necessarily a perfect one." *Allen*, 2000-NMSC-002, ¶ 95 (internal quotation
11 marks and citations omitted).

12 {64} Reviewing all of the comments made, in the context in which they were made,
13 and taking into account those comments' potential effect on the jury, the questions
14 were isolated and minor. Accordingly, the prosecutor's remarks did not deprive
15 Defendant of a fair trial.

16 IV. CONCLUSION

17 {65} We hold that the district court did not commit reversible error as to all of
18 Defendant's claims. Accordingly, we affirm Defendant's convictions.

1 {66} IT IS SO ORDERED.
2

3 
4 PETRA JIMENEZ MAES, Justice
5

6 WE CONCUR:

7 
8 CHARLES W. DANIELS, Chief Justice

9 
10 EDWARD L. CHAVEZ, Justice

11 
12 BARBARA J. VIGIL, Justice

13 
14 JUDITH K. NAKAMURA, Justice

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **MANDATE NO. S-1-SC-34576**

3 TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
4 CURRY, GREETINGS:

5 WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal
6 docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was
7 defendant, the district court entered judgment convicting defendant of willful
8 and deliberate first-degree murder and tampering with evidence; and

9 WHEREAS, the cause and judgment were afterwards brought into this
10 Court upon notice of appeal and statement of issues filed by defendant,
11 whereupon such proceedings were had that on December 1, 2016, a decision was
12 issued affirming defendant's conviction.

13 NOW, THEREFORE, this cause is remanded for further proceedings, if
14 any, consistent and in conformity with the judgment of this Court.

15 IT IS SO ORDERED.

16 WITNESS, Honorable Charles W. Daniels, Chief Justice
17 of the Supreme Court of the State of New Mexico, and
18 the seal of said Court this 11th day of January, 2017.

19 (S E A L)

20 Joey D. Moya, Chief Clerk of the Supreme Court
21 of the State of New Mexico

EXHIBIT

N

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

ALBERTO RAMIREZ

(Full name of prisoner)

Petitioner,

v.

Warden German Franco

EXHIBIT

0

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(Name of warden, jailor or other person having
power to release the petitioner)

Respondent.

Instructions -- Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS

1. ALBERTO
ROMERO (name of person in custody) is imprisoned or otherwise restrained at PNM
SOUTH (name of
facility and county of detention) by WACKIN (name and title of person having custody).
GERMAN
FRANCISCO

2. This petition

[W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

[W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

① INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL. INEFFECTIVE
ASSISTANCE ON APPEAL BY APPELLATE COUNSEL. @ THERE WAS IMPROPER

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

~~Commissary on Mr. Ramirez's right to speak~~ (4) Mr. Ramirez was pre-
 prejudiced by the July Security Holes restraints. (5) and falling down
 in front of my (6) ~~and other prisoners in custody~~ (7) ~~and~~
 (8) ~~the court~~ (9) ~~its discretion~~ by not allowing me to speak (10)

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

~~Verbal assault~~, verbally assaulted by
 Counsel, promised to be ineffective assistance
 if I refused to take plea. promised I could
 speak of sex abuse if I didn't feel he lied.

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

yes and not in detail or specific
 I ask for evolutionary hearing
 to correct the record.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

NO. First Habeas I believe

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

- ① APPOINTMENT OF COUNSEL to represent me on Habeas proceedings. ② Evidentiary HEARING, ③ TO REVERSE convictions and/or FOR A NEW TRIAL ④ TO REVERSE FOR a NEW SENTENCE HEARING. ⑤ TO GRANT DISCOVERY ⑥ grant an attorney to assist.

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

STATE OF NEW MEXICO V. ALBERTO ROMERO

OPEN COURT MURDER. TWO TAMPERING W EVIDENCE

(b) docket number:

~~23~~ don't know

(c) name of judge:

TEDDY L. HARTLEY

(d) name and location of the court in which the proceeding was held:

701 N. MAIN ST.

9th Judicial District Court

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014. SENTENCE.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

LIFE SENTENCE OF PRISON AFTER 30 YEARS.
Two three years to run consecutively. 1st charge murder
Two remaining with
public defender, etc.

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE. R. COSBY. P.O. BOX 3330
ROSWEIL. N.M. 88201

14. Did you appeal your conviction?

YES.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

State of New Mexico Supreme Court. / docket statement to
Criminal district court

(b) The case name and docket number for each appeal:

State of New Mexico J.S. Alberto Ramirez open court murder
and two tampering witnesses.

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Appeal was filed Jan. 12th 2015 I don't know
IT WAS decided Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

① Court error when it denied Mr. Ramirez a recusal motion to compete
to stand trial. ② Mr. Ramirez received ineffective assistance
of counsel ③ There was improper comment on Mr. Ramirez
right to silence ④ Mr. Ramirez was pressured by state officials
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⑤ The court abused discretion in admitting prior bad acts. ⑥ by not
declaring a mistrial

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied. as minor errors. and admissible
evidence and more.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG.
ASSISTANT APPELLATE DEFENSE

505 MARAUSHE NW. 87102 505-796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☐ Yes (Go to 18)

☒ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(b) The name and date of each case:

(c) the docket number:

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) the result of each proceeding. (*Attach a copy of each decision.*)

(f) The issues raised in each proceeding:

(g) State whether a hearing was held in connection with each of these proceedings:

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

S. J. R. 1055667 Assistant Appellate Clerk
505 Marquette N.W. Ste 120 Albuquerque NM 87102

19. Do you seek the appointment of counsel to represent you?

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF Curry

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th District
 Court (name of court)

Clovis (city), New Mexico, 88101 (zip code).

(
 Signature

(
 Address

(
 PNM No., if applicable

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

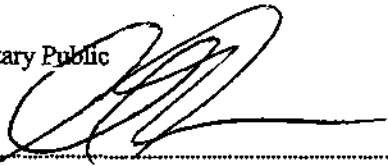
SUBSCRIBED AND SWORN TO before me this 14th day of JAN 2025, by

Alberto Ramirez

(Name of petitioner)

ALBERTO JOSE RAMIREZ

Notary Public



My Commission Expires: 4/23/20

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by _____ (describe manner of service), this ____ day of _____.

(
Signature of petitioner
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

1

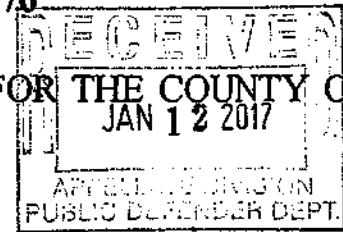
After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2

Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through July 1, 2015.

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**2 **MANDATE NO. S-1-SC-34576**3 **TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF**
4 **CURRY, GREETINGS:**5 **WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal**
6 **docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was**
7 **defendant, the district court entered judgment convicting defendant of willful**
8 **and deliberate first-degree murder and tampering with evidence; and**9 **WHEREAS, the cause and judgment were afterwards brought into this**
10 **Court upon notice of appeal and statement of issues filed by defendant,**
11 **whereupon such proceedings were had that on December 1, 2016, a decision was**
12 **issued affirming defendant's conviction.**13 **NOW, THEREFORE, this cause is remanded for further proceedings, if**
14 **any, consistent and in conformity with the judgment of this Court.**15 **IT IS SO ORDERED.**16 **WITNESS, Honorable Charles W. Daniels, Chief Justice**
17 **of the Supreme Court of the State of New Mexico, and**
18 **the seal of said Court this 11th day of January, 2017.**19 **(SEAL)**20 **Joey D. Moya, Chief Clerk of the Supreme Court**
21 **of the State of New Mexico**

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HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS JUST TV SECTIONS AUTOFINDER JUNE 13, 2014

Clovis teen charged with shooting

July 20, 2007

By Sharna Johnson: CNJ staff writer

A Clovis grand jury indicted a Clovis teen Friday on charges of first-degree murder in connection with the shooting death of his mother's boyfriend.

District Attorney Matt Chandler said Albert Ramirez, 18, is also charged with three counts of tampering with evidence.

Eladio Robledo died at Plains Regional Medical Center in Clovis after receiving multiple gunshot wounds July 12.

The shooting occurred on the sidewalk in front of Robledo's residence at 512 West Sixth St. in Clovis.

Witnesses told police Robledo, 39, was shot approximately five times and Ramirez was seen fleeing the area, court records show.

Ramirez hid clothing he was wearing at the time of the shooting along with other items of evidence, Chandler said. Those items were found by Clovis patrolman Brent Aguilar approximately two blocks from the homicide.

The gun used in the homicide has not been located, Chandler said.

Ramirez's mother, Debra Ramirez, shared the home on Sixth Street with the victim. They had been together approximately five years and Albert Ramirez had lived with them until recent months, Chandler said.

Debra Ramirez had filed incident reports in recent months telling police she was afraid of her son.

Chandler said the victim filed a no-trespass order in April against Albert Ramirez, barring him from the home where the homicide occurred.

Debra Ramirez reported to police she told her son to move out when he turned 18 in September because of his defiance, Chandler said.

Reports also said she told police her son frequently made harassing phone calls to her, according to Chandler.

Ramirez is being held at the Curry County Adult Detention Center on a \$100,000 bond.

A trial date will be set in coming weeks, Chandler said.

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AUTOFINDER

JUNE 13, 2014

Teen charged with murder has competency issues

July 16, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Sharna Johnson: CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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JUNE 13, 2014

Accused killer takes witness stand

October 10, 2013

By Robin Fornoff

CMI PROJECTS EDITOR

rfornoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on west Sixth Street for work.

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

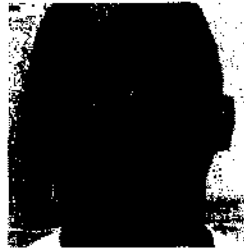
Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.



Albert Ramirez
On trial for murder

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High: 64° Low: 61°
Wind: S 13 mph
Humidity: 83%

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Patient: 14154.1 - ALBERTO J. RAMIREZ

Page 2

DOB: [REDACTED]

SSN: [REDACTED]

Date: 04/24/2007 11:30

Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG:tid, Qty:21, Days:7, Refills:0

Lexapro 10 MG TABS, SIG:qd, Qty:30, Days:30, Refills:2

Refer to unmc orthopaedics

pt has anger issues and is somatising

detailed discussion with brother about pts visits

otc knee brace, pt needs psychiatric help

refer to MHR, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

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Los Lunas, NM 87031

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Santa Rosa, NM 88435

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6900 W. Millen Dr.
Hobbs, NM 88244

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☐ NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

QUESTION # 3 AND 4 IN HABEAS PACKET

COUNSEL AT TRIAL VERBALLY ASSAULTED I MR RAMIREZ STATING I AM A STUPID LITTLE BITCH AND PROMISED TO BE INEFFECTIVE IF I MR Ramirez CONTINUED TO INSIST ON GOING TO TRIAL RATHER THAN ~~PLEA~~ PLEAD GUILTY AS COUNSEL INSISTED. AND THREATENED MR Ramirez BY SAYING I HOPE YOU GET LIFE. COUNSEL WOULD NOT COMMUNICATE WITH I MR Ramirez AS I TRIED TO NO AVAIL.

COUNSEL WOULD NOT FILE MOTIONS FOR CHANGE OF VENUE EVEN THOUGH THERE WAS EXTENSIVE MEDIA THAT WAS INCOMMISSIBLE, SAYING MR Ramirez THREATENED TO KILL HIS MOTHER AND STEP FATHER AND HIS MOTHER KICKED HIM OUT DUE TO HIS VIOLENT TENDENCIES.

COUNSEL WOULD NOT SUPPRESS EVIDENCE THAT I WAS HIDING IN CAR AND THEY FOUND TAP WORDS TALKING OF SHOOTING PEOPLE.

MR COSBY WOULD NOT CALL DR. MARJORIE SWARTZ TO TESTIFY FOR THE DEFENSE OF INABILITY TO PERFORM SPECIFIC INSTANT DUE TO MENTAL ILLNESS. SEVERE DEPRESSION, ANXIETY, SCHIZOPHRENIC PERMANENT, AND MY COMPETENCY TO STAND TRIAL.

I WANTED TO HAVE JURY INSTRUCTION ON THE ISSUE OF COMPETENCY RULE. 5-602 (a)(2)(B) AND REFUSED TO OBJECT TO INSTRUCTIONS I ASKED HIM TO.

I ALSO TOLD COUNSEL I DID FALL DOWN WHEN SHERIFF CALLED ME TO WALK TO HIM AND I WAS COERCED INTO SAYING NO BY SHERIFF DOCKETY AND I GUSTERED BEHIND MY LAWYERS BACK TO SAY NO I ASKED HIM TO REQUEST A MISTRIAL TO NO AVAIL.

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Clayton, NM 88415

Name _____
No. _____ Unit _____

Date: _____

MR COSBY REFUSED to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

ALSO witness Priscilla Lopez and Ricky Jaramillo eye witnesses would of testified that I am Real skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call de Fink as a witness at trial as I asked. de Fink would of testified that I was not competent and mentally ill

I asked counsel to call de. Joane Burness to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness.

I did express dissatisfaction with counsel and the court failed to inquire into the matter.

MR COSBY promised if I testified I would be able to speak of sexual abuse by Niebor and my moms boyfriend He used to incriminate me.

IF counsel did not lie I would not have testified and trial may have been different together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I wouldn't take plea.

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185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

Counsel did not call Ismael Ramirez who would of testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime he tried to go see me

Counsel failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, But the court refused to let me say anything about conflict between I and counsel.

I tried to put in record what trial counsel said after I tried to fire him.

Court refused to inquire into it if the court had I'd of got a new attorney or a mistake

I asked to represent myself.

I was denied my Sixth amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record

Thanks very much



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185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

ineffective assistance of appellate counsel
Saying in my appeal I abandoned to
Shaw counsel at trial was ineffective it
shows on record I asked to call
Dr. Maxine Swartz and was denied,
maybe I would of gotten an
evidentiary hearing on appeal
also heard not agree I did not receive
a fair sentencing and double jeopardy
on tampering with evidence.
I ask for an evidentiary hearing.

*room
much about him recently
delirious
Gunnville*

Communication: His speech was pressured and rambling. At times, he was able to comprehend questions but was unable to provide consistent or appropriate responses. **Sleep/Diet:** Mr. Ramirez reported "I can't sleep at all...I have physical pain and mental pain...I hear people talking in my head." He indicated that his appetite fluctuates and that he has lost weight since being incarcerated.

Suicidal Ideation, Intent, or Plans: He denied a history of suicidal ideations, intent, plans, or attempts, stating "No, they'll put me in that little room."

Substance Abuse History: Mr. Ramirez acknowledged using illegal drugs and alcohol in the past.

Current Medical/Physical Concerns and Medications: He denied past or present use of medications, including being prescribed psychotropic medications.

Current Mental Health Status: Mr. Ramirez presented with symptoms associated with a significant mental illness, including heightened instability of mood. Specifically, he evidenced a mixture of characteristic signs and symptoms involving a range of cognitive and emotional disturbances that may be associated with the initial onset of a psychotic disorder.

*Not healthy
falling
sitting
in a room*

DIAGNOSTIC IMPRESSIONS

RULE OUT-

Axis I: 295.30
 295.70
 309.81

Schizophrenia, Paranoid Type
 Schizoaffective Disorder, Bipolar Type
 Posttraumatic Stress Disorder, Chronic

Axis II: 799.9 Diagnosis Deferred

Axis III: Defer to Physician Report

Axis IV: Legal Problems

Axis V: 30

CONCLUSION

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male, with no known documented history of mental illness. However, throughout the evaluation, he evidenced a constellation of symptoms characteristic of Schizophrenia, including paranoia, psychoses, loose associations, disorganized thinking, poor reality testing,

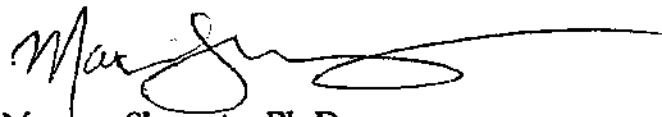
MAR 18 2008

depersonalization, inappropriate mood and affect, and poor judgment, reasoning, and insight. Mr. Ramirez reported numerous times "There's something wrong with my mind." Because of his current mental state, he was unable to complete a formal evaluation.

Based on his current presentation, Mr. Ramirez is not capable of competently proceeding with adjudication and handling the stress associated with the legal process. In his current state, he has been unable to assist his attorneys in his defense as he is unable to communicate in a logical or rational manner. He is also unable to provide any assistance to his attorneys regarding pertinent circumstances or events that led to his arrest in reference to the alleged charges. It is therefore the opinion of this examiner, that Mr. Albert Ramirez is not competent to stand trial.

Thank you for your referral.

Respectfully submitted by:



Maxann Shwartz, Ph.D.
Licensed Psychologist

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Name _____
No. _____ Unit _____

Date: _____

Exhibits

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Name _____
No. _____ Unit _____

Date: _____

motion
fraudulent assurance
of counsel
to counsel

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

NINTH JUDICIAL DISTRICT
CURRY COUNTY CLERK
FILED IN THE OFFICE

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

2017 APR 25 PM 1:37

[Signature]
CLERK DISTRICT COURT

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. D-905-CR-2007-00434

(To be supplied by the clerk of the court)

ALBERTO RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN FRANCO

(Name of warden, jailor or other person having
power to release the petitioner)

Respondent.

Instructions -- Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

EXHIBIT

P

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

1. ALBERTO RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PRISON of NEW MEXICO (name of facility and county of detention) by WARD (name and title of person having custody).

2. This petition

☒ [W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ [W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

1) PROSECUTORIAL MISCONDUCT REGARDING QUESTIONS ABOUT DEFENDANT DOING LEGAL RESEARCH, CASE U.S. CIR. 236 F.3d 77 (6th Cir. 2001) U.S. v. Francis, 172 F.3d 546, 552 (4th Cir. 1999) SPE. U.S. Stephen F. 2008- NMSC- 077, 71, 144 N.M. 360, 18th 20184.
2) JULY OBSERVATION OF DEFENDANT IN SHOWERS 3) INEFFECTIVE ASSISTANCE OF COUNSEL 4) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL 5) IMPROPER COMMENTS ON MR. RAMIREZ'S RIGHTS TO SILENCE - 6) PRIOR

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

backacts.
7) denial of
reduction of
competency
to stand trial

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES, I WAS TOLD OVER THE PHONE BY APPELLATE ATTORNEY APPEAL WAS DENIED AND NOW GIVEN THE DENIAL OF MY APPEAL. I AM BEING DONE WRONG.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

no

7. Briefly describe the relief requested:

app counsel to represent me on Habeas proceedings
2 EVINUTAN HARRY 3 to reverse conviction &
remand new trial & review for new sentencing
HARRY 5 to grant Habeas 6 Grant app of
CRIMINAL ASSIST

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

State of N. Mex. v. Abeta Ramiro
OPEN, COUNT OF MURDER

(b) docket number:

don't know

(c) name of judge:

Teddy L. Hartley

(d) name and location of the court in which the proceeding was held:

701. N. MAIN ST
9TH JUDICIAL DISTRICT COURT

9. State the date of the final judgment, order or decree for confinement:

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

JANUARY 8th 2014 Sentence

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

1. FC Eligibility of parole after 30 YRS
2 YRS to 2nd confinement, 1st confinement
3rd temporary sentence
4th sentence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE. R. CASSIDY P.O. Box 7730

Re. Sullivan NM 88001

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

State of N.Mex. U. Photo Review
District Court to 4th Judicial District Court

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(b) The case name and docket number for each appeal:

State of New Mex V. ALBA RAMIREZ
 COURT OF MURDER AND TWO COMPANY WITH
 EVIDENCE

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

APPEAL WAS FILED JAN 12TH 2015
 T. DONALD RAMIREZ
 IT WAS DECIDED DEC 1ST 2016

(d) A summary of the grounds upon which each appeal was based:

Court erred when it denied Mr. Ramirez a
 recalculation to competency. Mr. Ramirez received
 ineffective assistance of counsel 2, improper comment
 on character, Mr. Ramirez was prejudiced by
 summary judgments, court erred in admitting
 prior bad acts, court abused
 discretion in refusing to
 grant mistrial
 denied as minor errors
 and admissible evidence and more

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG
 ASSISTANT APPellate DEFENDER

SOS, Mesquite NW, 87102

SOS. 792 44

16. If you answered "no" to (14), state the reasons for not appealing:

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☐ Yes (*Go to 18*)

☒ No (*Go to 19*)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

.....
.....

(b) The name and date of each case:

.....

(c) the docket number:

.....

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

.....

(e) the result of each proceeding. (*Attach a copy of each decision.*)

.....
.....

(f) The issues raised in each proceeding:

.....
.....

(g) State whether a hearing was held in connection with each of these proceedings:

.....

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

Steven J Fersberg ASSISTANT appointed
 20 Federal St. Macanette N.W. Ste 120
 Albuquerque, NM 87102

19. Do you seek the appointment of counsel to represent you?²

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, ____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

INTERNAL
 DISTRICT
 COURT (name of court)
 CLAVIS (city), New Mexico, 87101 (zip code).

(
 Signature

) Alberto Ramirez

(
 Address

) P.O. Box 1059 Santa Fe 87502

PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 11 day of JAN 2017

Alberto Ramirez

(Name of petitioner)

Alberto Ramirez

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

Notary Public

My Commission Expires:

4/23/20

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by _____ (describe manner of service), this ____ day of _____, ____.

X ABED RAMIRIZ
(
Signature of petitioner
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

- 1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.
- 2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through August 1, 2016

End of Document

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January 12, 2017

To: Alberto Ramirez #69,597

From: Steven J. Forsberg, Assistant Public Defender

Re: Status of your appeal

Dear Mr. Ramirez,

As we discussed on the telephone, the New Mexico Supreme Court has ruled against you on your appeal. Your direct appeal is now over. You can file a writ of habeas corpus, and I recall you said you had the package of paperwork. I cannot represent you on your habeas case, but when you file your request I advise that you ask that an attorney be appointed for you.

You mentioned that a lot of your papers were lost, so I am sending you copies of the brief-in-chief, state's answer, and reply brief in your case.

As I said, I cannot write your habeas petition for you, but I'd suggest you consider adding this to it: In your Brief-in-Chief on page 17 it states that you had asked Doctor Schwartz to be called as a witness on your behalf, but she was not. This is evidence that there were witnesses you wanted called that were not.

You have my name and number if you have any further questions regarding your direct appeal.

Steven J. Forsberg, Assistant Public Defender

505 Marquette Ave. NW ste 120

Albuquerque, NM 87102

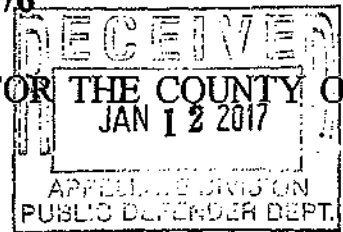
Phone: (505)796-4405

Steven Froberg

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was defendant, the district court entered judgment convicting defendant of willful and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this Court upon notice of appeal and statement of issues filed by defendant, whereupon such proceedings were had that on December 1, 2016, a decision was issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

A true copy was served on all parties
or their counsel of record on date
filed.

Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

□
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□
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□
WNMCF
P.O. Drawer 250
Grants, NM 87020

□
NENMDF
185 Doctor Michael Jenkins Rd
Clayton, NM 88415

Name _____

No. _____

Unit _____

HABEAS PACKET Date: _____

QUESTION # 3 AND 4 IN

COUNSEL AT TRIAL VERBALLY ASSAULTED I MR RAMIREZ STATING I AM A STUPID BITCH AND PROMISED TO BE INEFFECTIVE IF I MR Ramirez CONTINUED TO INSIST ON GOING TO TRIAL RATHER THAN ~~PLEA~~ PLEAD GUILTY AS COUNSEL INSISTED. AND THREATENED MR Ramirez BY SAYING I HOPE YOU GET LIFE. COUNSEL WOULD NOT COMMUNICATE WITH I MR Ramirez AS I TRIED TO NO AVAIL.

COUNSEL WOULD NOT FILE MOTIONS FOR CHANGE OF VENUE EVEN THOUGH THERE WAS EXTENSIVE MEDIA THAT WAS INCOMMISSIBLE, SAYING MR Ramirez THREATENED TO KILL HIS MOTHER AND STEP FATHER AND HIS MOTHER KICKED HIM OUT DUE TO HIS VIOLENT TENDENCIES.

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MR COSBY WOULD NOT CALL DR. MAXIMILIAN SWARTZ TO TESTIFY FOR THE DEFENSE OF INABILITY TO PERFORM SPECIFIC INSTANT DUE TO MENTAL ILLNESS. SEVERE DEPRESSION ANXIETY, SCHIZOPHRENIA PERSONALITY, AND MY COMPETENCY TO STAND TRIAL.

I WANTED TO HAVE JURY INSTRUCTION ON THE ISSUE OF COMPETENCY Rule 5-602 (B)(3) AND REFUSED TO OBJECT TO INSTRUCTIONS I ASKED HIM TO.

I ALSO TOLD COUNSEL I DID FALL DOWN WHEN SHERIFF CALLED ME TO WALK TO HIM AND I WAS COERCED INTO SAYING NO BY SHERIFF DOCKETY AND GUSTERED BEHIND MY LAWYERS BACK TO SAY NO I ASKED HIM TO REQUEST A MISTRIAL TO NO AVAIL.

☐
CNMCF/CMRU/CMU
P.O. Drawer 1328
Los Lunas, NM 87031☐
GCCF
P.O. Box 520
Santa Rosa, NM 88435☐
LCCF
6900 W. Millen Dr.
Hobbs, NM 88244☐
PNM
P.O. Box 1059
Santa Fe, NM 87504☐
SNMCF
P.O. Box 639
Las Cruces, NM 88004☐
SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004☐
WNMCF
P.O. Drawer 250
Grants, NM 87020☐
NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____ Unit _____

Date: _____

MR COSBY refused to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

also witness pricilla lopez and Ricky Jaramillo and witnesses would of testified that I am Real skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call de Fink as a witness at trial as I asked. de Fink would of testified that I was not competent and mentally ill

I asked counsel to call de Joane Burness to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness.

I did express dissatisfaction with counsel and the court failed to inquire into the matter.

MR COSBY promised if I testified I would be able to speak of sexual abuse by Niebor and my moms boyfriend He tried to intimidate me.

if counsel did not lie I would not have testified and trial may have been different together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I wouldn't take plea.

☐
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WNMCF
P.O. Drawer 250
Grants, NM 87020☐
NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____ Unit _____

Date: _____

COUNSEL did not call IS/CA Ramirez who victim of testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime he tried to go see me

COUNSEL failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, but the court refused to let me say anything about conflict between I and counsel.

I tried to put in record after trial counsel said after I tried to fire him.

Court refused to inquire into it
if the court had I'd of got a new attorney or a mistrial

I asked to represent myself.

I was denied my Sixth amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record

Thanks usly much



CNMCF/CMRU/CMU
P.O. Drawer 1328
Los Lunas, NM 87031



GCCF
P.O. Box 520
Santa Rosa, NM 88435



LCCF
6900 W. Millen Dr.
Hobbs, NM 88244



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P.O. Box 1059
Santa Fe, NM 87504



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P.O. Box 639
Las Cruces, NM 88004



SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004



WNMCF
P.O. Drawer 250
Grants, NM 87020



NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____
No. _____ Unit _____

Date: _____

INEFFECTIVE ASSISTANCE OF APPLICABLE COUNSEL
Saying in my appeal I abandoned to
Show counsel at trial was ineffective it
Shows on record I asked to call
DR. MAXINE SWARTZ and was denied
Maybe I would of gotten CW
Evidentiary Hearing on appeal
Also decided not argue I did NOT receive
a fair Sentencing and double jeopardy
ON TEMPERING WITH EVIDENCE.
I ASK FOR CW EVIDENTIARY HEARING.

☐
 CNMCF/CMRU/CMU
 P.O. Drawer 1328
 Los Lunas, NM 87031

☐
 GCCF
 P.O. Box 520
 Santa Rosa, NM 88435

☐
 LCCF
 6900 W. Millen Dr.
 Hobbs, NM 88244

☐
 PNM
 P.O. Box 1059
 Santa Fe, NM 87504

☐
 SNMCF
 P.O. Box 639
 Las Cruces, NM 88004

☐
 SNMCF-POU
 P.O. Box 20095
 Las Cruces, NM 88004

☐
 WNMCP
 P.O. Drawer 250
 Grants, NM 87020

☐
 NENMDF
 185 Doctor Michael Jenkins Rd.
 Clayton, NM 88415

Name _____
 No. _____ Unit _____

Date: _____

Exhibits
 included

with to
 request counsel
 to assist to

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12:21


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

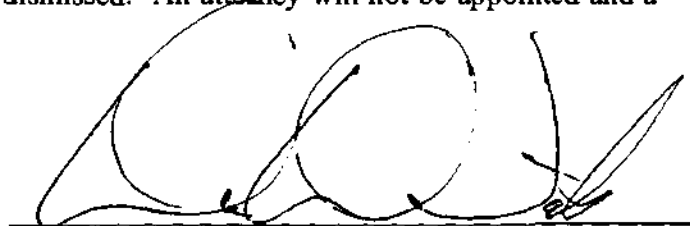
EXHIBIT

Q

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.

A handwritten signature in black ink, appearing to read 'Drew D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
District Judge, Division II

STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

JUN 20 2017

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

Clerk District Court

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF

CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

AIBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN GERMAN FRANCO

EXHIBIT

R

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions -- Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. ALBERT RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PNM Penitentiary of New Mexico (name of facility and county of detention) by WARDEN GUERRA FRANCO (name and title of person having custody).

2. This petition

☒ [W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ [W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL
AND APPEAL COUNSEL ON APPEAL →

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I TRIED TO SPEAK
TO COUNSEL TO NO
AVAIL. INFERRED
COUNSEL TO

COUNSEL MR. COSBY. BEFORE TRIAL BEGINS AND AFTER I
TRIED TO FIRE HIM IN FRONT OF JURY AND VERBALLY
ASSAULT AND MADE THREATS STATED, STUPID B. THE BITCH
I PROMISE TO BE INEFFECTIVE ASSISTANCE IF YOU KEEP DO
SAYING YOU WANT TO GO TO TRIAL AS I INSIST. I HOPE
YOU GET LIFE

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

(I DON'T KNOW WHAT THIS MEANS. SIE)

I'll TRY? IT IS A CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE AT TRIAL + ON APPEAL

I'VE WRITTEN ON EXTRA SHEETS OF PAPERS TO
EXPLAIN. SOME FACTS BEST AS I CAN.
+ EXHIBITS - EVIDENCE
ALLEGATIONS

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES, I WAS TOLD APPEAL WAS DENIED TO FILE
A HABEAS PACKET. NOW HERE IS THE
HABEAS.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

I RAISED THIS ISSUE IN FIRST HABEAS.
NOW THIS ONE IS TO ~~RE~~ RESUBMIT IT
AND FIX IT.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

TO BE APPOINTED ASSISTANCE FROM
PUBLIC DEFENDER post conviction division
to ASSIST ME TO GET AN EVIDENTIARY
HEARING TO PROVE THE ALLEGATIONS ARE TRUE

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

D-0905-CR-2007-00434 I'M NOT
SURE

(b) docket number:

D-0905-CR-2007-00434 DON'T
KNOW

(c) name of judge:

Teddy. L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700. N. MAIN ST
9th JUDICIAL DISTRICT COURT

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligibility AFTER 30 yrs plus two 3 yrs
two tampering with evidence,
1st degree murder
2 tamper with evidence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE R. COSBY

P.O. Box 3330

14. Did you appeal your conviction?

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court.

New Mexico Supreme Court of Appeals.

(b) The case name and docket number for each appeal:

(Don't know how to do this.)

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed Sometime Around August 2013.

Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

Competency Reevaluation, Ineffective assistance of counsel, improper comments on silence, prosecutor misconduct, prior bad acts.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG

505. Marquette N.W 87102

505. 796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

petition Habeas, denied, but I've put new motion to
Recon's. etc, answer, revised petition
decision

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

Petition Habeas, But this one is to
Resubmit it to try to do it properly

(b) The name and date of each case:

9th Judicial district court, State of N.Mex. v. ABST
RAMIREZ

(c) the docket number:

NOID-0905-CR-2007-00434

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

NA

(e) the result of each proceeding. (Attach a copy of each decision.)

denied,

(f) The issues raised in each proceeding:

INEFFECTIVE ASSISTANCE OF COUNSEL,

(g) State whether a hearing was held in connection with each of these proceedings:

NO

NO

✓ Yes

 No

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

Am. Trust
Court (no)

C Court (name of court)

8-8101

____ (city), New Mexico, ____ (zip code).

Signature

ALBERT JOSE RAMIREZ

Address

D.O. BOX. 1059 SANTA FE 87501

PNM No., if applicable

NOTARIZE PLEASE
3/27/2019

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

SUBSCRIBED AND SWORN TO before me this 12 day of JUNE, 2017, by

(Name of petitioner)

AIBERTO RAMIREZ

Notary Public

My Commission Expires: 4/23/2019

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MAIL (describe manner of service), this 13 day of JUNE, 2017.

(
Signature of petitioner AIBERTO RAMIREZ
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

1

After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2

Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through July 1, 2015.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

End of Document

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THE WAY TO USE THE
EXHIBITS WITH THE ISSUES

I claim + present.

Just GO TO page and

OR Exhibit or Both.

I am NOT A lawyer,

I had NO more paper
to make it nice + neat.

I had to send it out
ASAP. + copies + ALL.

IM BEING IGNORED by
law library IN PRISON.

PLEASE. EXCUSE MY

MISTAKES. I TRIED
MY BEST.

Facts - transfer of newspaper of papers,
discovery, to prove claim of
INEFFECTUENESS COUNSEL

See Exhibit 4, 5

MR. COSBY COUNSEL TRIAL DENIED
~~and~~ and failed to provide effective
ASSISTANCE.

A WEEK BEFORE TRIAL
I ASK TO FIRE MY ATTORNEY
DURING TRIAL IN COURT I
FIRED MY ATTORNEY. EACH TIME
THERE NO INQUIRE INTO WHY
I WAS EXPRESSING DISSATISFACTION
I WAS TOLD TWICE BY MR
COSBY BEFORE TRIAL STARTED
AND AFTER I TRIED TO FIRE
HIM IN COURT DURING TRIAL
COSBY STATED - I AM A LITTLE
STUPID BITCH and ~~and~~ made
threats, by SAYING I hope
you GET life, I already told
you to take the plea or you
WONT be provided EFFECTIVE
ASSISTANCE OF COUNSEL.

I WAS NOT able to put the
allegations on RECORD.

But SEE Exhibit's (10) page 1, 2, 3, 4, 5
(10) page 38-47

Page 2

See EXHIBIT
page 47

Page 13

54, 55, 56
EXHIBIT 13

page 2

I TRIED to address court my lawyer was NOT Filing ANY OF my motions I ASKED him to. CHANGE OF VENUE, EVEN though there WAS PRE-TRIAL publicity concerning the case in small community of CUBS, NEW MEXICO. Some of this publicity inaccurately described Mr Ramirez as having attacked alleged victim on prior occasions, THE publicity WAS inaccurate and highly prejudicial and defense counsel should have at least raised the issue and requested a HEARING. SEE EXHIBIT 13

Counsel should have at least Filed a motion to suppress evidence that WAS illegally seized & inadmissible and highly prejudicial SEE EXHIBIT 11, 48, 49, 50 OF REQUESTED A HEARING ON THIS ISSUE

Counsel did NOT provide me with all discovery, would NOT discuss who he was planning to call as witnesses AND would NOT discuss intent to present the defense OF INSANITY Counsel did NOT file a Notice OF INTENT to present the defense EXHIBIT 1) page - 1, 2, 3, 4, 5

page 3

page 4, 10, 12, 13
page 47
Exhibit 1, 3, 10

Insanity, But Instead of advocating zealously on BEHALF OF MR. RAMIREZ'S DEFENSE, COUNSEL INFORMED THE COURT THAT HE WOULD NOT BE PRESENTING EXPERT PSYCHIATRIST, OR PHYSICIAN, BECAUSE MR. RAMIREZ WOULD DISCUSS THE CASE WITH HIM AND IS UNABLE TO ASSIST IN THE DEFENSE.

COUNSEL FAILED TO ALERT THE COURT TO IMPORTANT FACTS IN ARGUING THE CASE. MR. RAMIREZ WAS INJURED IN AN ACCIDENT IN 2007 WHICH HE BEGAN TAKING ANTI-DEPRESSANT MEDICATION, & OTHER MEDICATIONS. THIS BECAME SEVERE DEPRESSION AS HE WAS UNABLE TO WALK, WORK, OR DRIVE, COULD ONLY WALK WITH CRUTCHES, SUFFERED FROM PSYCHOSOMATIC DELUSIONS, HALLUCINATIONS, ~~AND~~ COUNSEL DID NOT PRESENT EVIDENCE OF THE MEDICATION MR. RAMIREZ WAS TAKING.

MR. RAMIREZ FELT HIS LAWYER WAS AGAINST HIM, SEE page 4, 10, 12, 13
Exhibit 1, 3, ~~AND~~

SEE EXHIBIT 1, page 10, page 4
EXHIBIT 10, page 4

COUNSEL Failed to File any
WITNESS list WHATSOEVER IN
SUPPORT OF MR. RUIRIZ'S defense
OF INSANITY and lack of capacity

MR. RUIRIZ had several witnesses
He wished to present in support of
his defense, including his Aunt,
Sister, Brothers, Friends, and
doctors who treated him after
accident.

COUNSEL failed to show courts JENNIFER SAID write
I was to cooperative
MR. RUIRIZ asserts that he de. witness lied said I
received ineffective assistance of would not
COUNSEL for various reasons that appropriate
are, unfortunately, not on
record, because those matters
were not preserved in the record.

MR. RUIRIZ Request ~~that~~ that the
court grant him an attorney to
assist him in habeas proceedings
and to hold an evidentiary
HEARING. ON INEFFECTIVE OF
COUNSEL.

See Exhibit 1
Page 1-5

Exhibit 1. 2:12 05 PM

↓ 10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
COUNSEL VERBALLY ASSAULTED ME I
ADVISED COUNSEL. I DID FALL DOWN
IN FRONT OF JURY BECAUSE OF
THE SHACKLES ON MY LEG TIED TO
THE TABLE, WHEN I WAS TOLD TO
RISE, SHERIFF CALLED ME TO DOOR
I FELL, JURY SAW MY SHACKLES,
WHILE MY LAWYER WENT TO TALK TO THE
JUDGE THE JUDGE, THE SHERIFF
DOUBTLY THREATENED ME AND TOLD
ME TO SAY I DID NOT FALL.

I WAS ASKED BY JUDGE DID YOU
FALL. I SAID YES THEN NO
BECAUSE SHERIFF WAS GESTURING
ME TO SAY NO. ONLY D.A.
COULD SEE. SHE WAS SHACKLING
HEAD + FINGER AND MOVING NO.

I TOLD MY LAWYER THIS AND
ASK HIM WHY DONT HE SAY
IT TO THE COURT.

HE SAID NO I ALREADY MADE
UP MY MIND.

page 6

Exhibit 1 page 1-5

Counsel Failed to Alert the court that
 Told him I did Fall, JURY Saw
 my SHOULDER, Sheriff docently
 manipulated me to say NO.
 (TO GO AGAINST MYSELF) ASK docently. CHAMBER
 COUNSEL Failed to Call, DR FINK,
 DR. BURNESS, DR. MAXINE SWARTS
 WHO I advised I had BEEN
 SEXUALLY ABUSED MY MOMS
 big FRIEND, + NISBOR SAM SAIZ
 SEE EX.BIT, 24, 5 PAGES 4, 7, 8, 12, 13
 17, 18-27

COUNSEL Failed to Call witness, PRICILLA
 LOPEZ, RICHY TORRILLO, to HELP PROVE
 I WAS the ONE being CHASED IN
 YARD, to HELP PROVE my testimony
 truthful,

SEE EX.BIT 7, 8, 10

COUNSEL Failed to investigate family
 HISTORY OF MENTAL ILLNESS, and
 family witnesses to defense OF
 INSANITY, 4, 5.

I would try to call him and
 write to talk he ignored me or was
 too busy, to see EX.BIT. 4, 5, 7,
 page 18 to 24 + 27 + 30 + 47

SEE

EXHIBIT 2

EXHIBIT 4, 5

page 17
page 19
EXHIBIT page 25

COUNSEL Failed to Keep Promises
Made, of being able to testify
about Sexual Abuse and that he
would file motions I asked him
to file
SEE EXHIBIT 4, 5, 10
page 47

COUNSEL Failed to call my father & brother
who would testify Eladio Fobledo
was violent and had assaulted me
and them in past.
My father and brother are willing
to testify to this at hearing.

COUNSEL Failed to call Dr Maxine
Swatts as witness who would
testify as to my insanity defense
and sexual abuse and incompetency
SEE EXHIBIT 9, 10
page 39 to 43 + 47
COUNSEL Failed to present my
defense at trial.

~~COUNSEL Failed to give me advice when~~

COUNSEL Failed to give me advice when
I asked once I was drunk when I killed
my step dad. do I tell that or not. He did not
421P/2

page 8

COUNSEL Failed to GET MEDICAL
RESOURCES to SHOW I WAS
ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of
the plea did not explain the
maximum & minimum time
I was facing even though I
tried to ask. (SEE PAGE 4) S, 4)

COUNSEL Failed to Be respectful
and responsible and fulfill his
duty of loyalty and advocate
to me his client.

COUNSEL Failed to Argue I was
the one being chased by Robles
that I was 100 pounds and Robles
175 pounds, not 145 as medical
EXAMINER said, page - 7-10
SEE EXHIBITS 2,

COUNSEL Failed to Alert court
I was hearing voices during trial.
SEE EXHIBIT, 1, 1A, 4, 5, 6

SEE EXHIBIT ⁹
PAGE 34.35

APPROPRIATE COUNSEL FAILED TO
ARGUE THAT TRIAL COUNSEL
FAILED TO CALL WITNESSES WHO
WOULD HAVE TESTIFIED TO MY
MENTAL ILLNESS, DEFENSE OF INSANITY,
OR LACK OF CAPACITY, OR COUNSEL
MADE PROMISES NOT KEPT.

APPROPRIATE COUNSEL FAILED TO ARGUE I WAS
NOT GIVEN A FAIR SENTENCING
HEARING.

SEE EXHIBIT.

APPROPRIATE COUNSEL FAILED TO ARGUE ON
APPEAL I TOLD HIM I HAD BEEN
VERBALLY ASSAULTED BY TRIAL COUNSEL
LITTLE BITCH, AND THREATENED ME
WITH INEFFECTIVE ASSISTANCE IF
I REFUSED TO TAKE PUNA.

APPROPRIATE COUNSEL FAILED TO MAKE AWARE
SUPREME COURT OF APPEALS OF PUNA
IN MY APPEAL I WANTED
TO REPRESENT MYSELF.

page 47

page 10

SEE EXHIBIT 10

Appellate counsel Failed to CISK IN
APPEAL FOR AN Evidentiary
HEARING ON All These problems.

COUNSEL Failed to ARGUE I was
~~double~~ double Jeopardy to charge 47
me twice with 31 degree ^{page 47}
tampering with evidence. EXHIBIT 10

THE District Court Failed to
INQUIRE INTO THE MATTER
WHEN IT IS ON RECORD
MR. RAMIREZ Complained ON
MORE THAN ONE OCCASION ~~ON~~
TO THE JUDGE OF HIS Frustration
WITH DEFENSE COUNSEL. AND
EVEN THOUGH MR. RAMIREZ ask
FOR SUBSTITUTE OF COUNSEL
twice BEFORE trial and
fired his ATTORNEY once
IN trial IN front of
Jury. and asked to
represent himself.

SEE EXHIBIT. 1, ~~10~~, 6
page 1 - EXHIBIT 1
EXHIBIT 6 - page 28.

page 1 through 5

page 11

Exhibit 1,

Counsel Failed to communicate Back with Mr. Ramirez, even though Mr. Ramirez tried to no avail.

Mr. Ramirez received Ineffective Assistance of Counsel and denied his Constitutional Right to effective Assistance of Counsel.

I Mr. Ramirez ask the Court to appoint attorney to assist with habeas process.

Mr. Ramirez ask for an evidentiary hearing to dispute the record necessary to prove allegations - A disposition hearing also. - Also attached witness statement by my brother Jose Ramirez who spoke to Mr. Cosby and told me to file my attorney.

Sincerely

Albert

Ramirez

Page 12

Page 12

THE EXHIBIT'S
ARE ONLY LABELED
1 to 13 and pages 1-56

I did NOT label
1A, 1B, 1C, NO.

ONLY, 1 to 13.

They are all relevant
to certain facts
+ allegations to
support my claim
OF. Ineffective assistance
OF counsel trial +
appellate attorney.

I ASK the courts
All them to NOT
dismiss my ~~CASE~~ ~~case~~
Habeas Because
I'm pro se, please appoint
me an attorney OR grant
an evidentiary hearing, or
Preliminary hearing let me
prove my claim I
NEED A chance.

I do have A witness my
brother who can testify
to the threats made by
MR. COSBY. COSBY told my
brother to tell me to plea
my brother knows of the threats

COUNSEL did advice me to take
Plea But would not explain
what the plea was.

Also COUNSEL did not tell
me the maximum time
I was facing
I did not know.
I thought the most
I could get was
15 yrs.

I did not know
Mr. COSBY would not
answer any of my questions
or explain anything to me.

He was disrespectful,
mean, rude, unprofessional
and did not provide
effective assistance.

COUNSEL would not call all witnesses
or file motions, change venue,
for private investigator, new
competency evaluation, - See Ex. 51 & 16

IF NOT FOR TRIALS COUNSELLS
INEFFECTIVE ASSISTANCE OF
COUNSELLS MR. RAMIREZ WOULD OF
HAD A STRONGER CASE GOING
INTO TRIAL. MR. RAMIREZ
WAS PREJUDICED BY COUNSEL
LACK OF EFFECTIVE ASSISTANCE.
PLEASE I WOULD ASK FOR
AN ATTORNEY IF I HAD
MONEY EVEN AT SENTENCING
COUNSEL FAILED TO PROVIDE
EFFECTIVE ASSISTANCE.
I SEEM DENIED A FAIR
TRIAL. ALL ROUND.

THIS IS TO HELP PROPERLY PRESENT
PETITION FOR HABEAS. THE FACTS
IN RECORD AND OFF RECORD.
THE CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL AT
TRIAL AND INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL.

I AM TRYING TO SHOW
I SHOULD BE GIVING
AN OPPORTUNITY TO SHOW
AND PROVE MY CLAIM +
ALLEGATIONS AND TO RECEIVE
ASSISTANCE FROM PUBLIC
DEFENDER OFFICE. ON POST
CONVICTION ASSISTANCE.

PLEASE AND THANK YOU
SO MUCH
FOR YOUR TIME HELP
KINDNESS GOD BLESS

IF counsel had effectively represented MR Ramirez. IT IS likely that I would OF Had a STRONGER CASE going INTO TRIAL and this would have affected MR RAMIREZ'S decision to ENTER INTO a plea. MR RAMIREZ complained ON MORE THAN ONE OCCASION TO THE JUDGE about his Frustration with defense COUNSEL. MR. RAMIREZ WAS denied effective ASSISTANCE OF COUNSEL.

I ASK for an ATTORNSY TO HELP. Evidentary HEARING,

I ASK to Re submit my Habeas petition this one to SEND TO SUPREME COURT.
PLEASE and THANK YOU FOR
Your Time God Bless

PO Box ALBERTO
1059 Ramirez
Santa Fe NM 87501 69897

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RSEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE , ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD MR. COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM, I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

10/10/2013

11 of 16
page 1

why

EXIST

Page 2
91,311 + ①
899 ?

The judge interrupted and asked the prosecution to lay a foundation. The prosecution asked Mr. Ramirez "Do you recall giving a lot of requests to go to the law library to research how to beat your charges?" The defense objected and asked to approach. The judge directed the prosecution not to ask those questions but said that he would not declare a mistrial. [10-10-13 CD B 1:56:15-1:58:25]

Later on October 10th, when Mr. Ramirez's defense counsel was finished questioning Mr. Ramirez's brother on direct examination, Mr. Ramirez interrupted the proceedings:

Mr. Ramirez: "Hey, your Honor, I got some questions I need to ask him."

Judge: "But you can't ask them."

Mr. Ramirez: "Why didn't you ask... I want to fire..."

Judge: "We're going to sit you in the other room if I hear anything more from you."

Mr. Ramirez: (speaking over the judge) "I fire him. He's fired. I want to represent myself... I have the right to fire him and represent myself! He's not representing me right!"

The Judge ordered Mr. Ramirez from the courtroom and excused the jury. [10-10-2013 CD B 2:09:45-2:10:30] Following the recess defense counsel spoke with Mr. Ramirez and the trial resumed with Mr. Ramirez present.

EXHIBIT 1, ①

page 2

Page 3

EXIBIT 1

Page 3

"Mr. Cosby is my attorney and he's supposed to be for my defense but like I've said in the past I've asked to fire him, I've asked to get a new attorney which I can't afford it I'm poor, I have no help from my family just basically to get my hygiene and also I asked for a new attorney, I asked for a private investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I've asked for several motions which I don't know if they were even filed or if they were denied, I don't know if Mr. Cosby, I just feel like maybe I have a big mouth and I sit to open my big mouth and say things and I don't know if I made him angry or upset or frustrated or what I've done but for some reason I don't know if he's going to lose this case because it's a weak case or if it's intentionally or accidental or if I'm just paranoid."

But they call they
want to
convict me.
Why?

The judge interrupted and told Mr. Ramirez that he had made his record. Mr. Ramirez told the judge that he had more things to say, but thanked the judge for giving him that time. [10-10-2013 CD B 9:22:00-9:26:00]

But they call they
want to
convict me.
Why?

Testimony of Albert Ramirez

Mr. Ramirez took the stand. His entire testimony was punctuated with run-on and irrelevant statements as well as admonitions from his counsel and the judge. He repeatedly kept raising issues of his health and health history. He stated that he had the flu and didn't feel well. When asked about his height he talked about getting into an accident while driving a car and starting to lift weights, and he was taller in 2007. Shortly thereafter, when defense counsel tried to get Mr. Ramirez to answer who his mother was, Mr. Ramirez objected, "You didn't let me finish where I stayed in July." Mr.

EXIBIT 1

Following the finding of competency and after nearly two years of silence, Defendant became an active participant in the process. At a July 29, 2013, status conference, he addressed the court regarding the letters he had written stating he wanted new counsel because Mr. Cosby had not fulfilled his duties and he was confused because Mr. Cosby was not telling him what was happening. [CD 7-29-

13, 9:35:13 to 9:36:25] Defendant asked for a continuance to get a new attorney, to prepare his case and to have another psychiatric evaluation, which would show he was suffering from "psychosomatic delusions and hallucinations and severe depression and anxiety." [CD 7-29-13, 9:41:06 to 9:41:32, 9:36:58 to 9:37:20,

9:39:58 to 9:40:10] The trial court reviewed Defendant's file, stated it was confident Mr. Cosby was providing Defendant competent representation, and denied Defendant's requests for substitute counsel and a continuance. [CD 7-29-

13, 9:42:31 to 9:43:52] Defendant persisted in his desire for a continuance, explaining he had "always been remorseful and everything," and he "would have took the plea, but they gave me two-and-one-half extra years that [he] wasn't supposed to get." [CD 7-29-13, 9:46:45 to 9:46:56]

Ultimately, Defendant's case did not go to trial until October 7, 2013. The first day of trial, the jury heard testimony from Mr. Saiz, Ms. Finkey and a crime scene investigator. The second day of trial, after the trial court released the jury for the day, the prosecutor emphasized its first two witnesses the next day needed to

INFORM
ME
I TRIED
TO NO AGAIL
OR XAINS TO ME
KEEPING ME

EXHIBIT 1

4
PAGE
4

Ex-Bit 1

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>2:14:36 PM</u>	COURT	HE HAS BECOME EXPLOSIVE AND SHOOTS OFF HIS MOUTH, GO TALK TO HIM AND SEE WHAT WE WILL DO, WE ARE CLOSE TO THE END
<u>2:15:25 PM</u>	RECESS	
<u>2:36:30 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
<u>2:37:06 PM</u>	COSBY	HAVE DISCUSSED WITH MY CLIENT HIS OPTIONS HE HAS STATED HE FEELS HE NEEDS ME, I TOLD HIM EITHER I REPRESENT HIM OR HE REPRESENTS HIMSELF, I CAUTIONED HIM HE NEEDS TO OBEY COURT RULES, HE SAID HE WOULD RATHER HAVE SOMEONE ELSE BUT HE NEEDS ME, I EXPLAINED TO HIM AS FAR AS THE LAST WITNESS, THE WITNESS TELLS ME HE DOES NOT REMEMBER IN FRONT OF THE JURY, SO RATHER THAN CALL SOMEONE TO STAND THEY DON'T REMEMBER I JUST DON'T ASK THAT QUESTION, THERE ARE QUESTIONS THAT ARE NOT ASKED FOR REASONS
<u>2:39:17 PM</u>	COURT	LET THE RECORD REFLECT THAT MR. RAMIREZ HAS RETURNED TO THE COURTROOM AND MR. COSBY WILL BE CONTINUING HIS REPRESENTATION, NOT ANOTHER OPPORTUNITY TO CHANGE COUNSEL
<u>2:39:55 PM</u>		ADVISES DFT THAT THERE IS AUTHORITY THAT ALLOW YOU TO SIT IN ANOTHER ROOM TO WATCH TRIAL, IT IS AN OPTION IF YOU CONTINUE TO BE DISRUPTIVE YOU WILL SIT IN ANOTHER ROOM AND VIEW TRIAL BY VIDEO
<u>2:40:48 PM</u>	COSBY	HE ASKED ME IF IT WAS BETTER TO SIT IN ANOTHER ROOM, I TOLD HIM IT WOULD BE AGAINST HIS INTEREST TO VIEW BY VIDEO
<u>2:41:36 PM</u>	CHANDLER	I DON'T HAVE ANY XEX FOR MR. RAMIREZ BROTHER OF DFT
<u>2:42:28 PM</u>	COSBY	I HAVE TOLD HER WHAT SHE CAN SAY AND CANNOT SAY
<u>2:42:40 PM</u>		BENCH CONFERENCE
<u>2:44:43 PM</u>	COSBY	REGARDING PHOTO OF IVAN VASQUEZ SHOWING PHOTO OF HIM IN BOOKING, AND RECEIVED THIS LETTER
<u>2:46:00 PM</u>	CHANDLER	RELEVANCE TO THE PICTURE, COURT WILL NOT ALLOW PHOTO
<u>2:47:19 PM</u>		JURY BEING BROUGHT INTO COURTROOM
<u>2:48:04 PM</u>		OFF RECORD
<u>2:51:51 PM</u>		#3 WITNESS HESQUIA RAMIREZ CALLED BY COSBY / SWORN / DEX
<u>2:52:03 PM</u>		JURY BEING SEATED IN BOX
<u>2:53:09 PM</u>	CHANDLER	MR. JOSE RAMIREZ, THE STATE DOES NOT HAVE ANY QUESTIONS

292
Why was H able to speak

Real
*if

page
5

10/10/2013

Exhibit 1

12 of 16

page
5

EXHIBIT 2 page 4

Sam Saiz

CSP or statutory rape

90's -

△ (myer → Cosmo Ripel
DA → BSC
Judge Hensley

DOB: [REDACTED]
SS# [REDACTED]

89-CR-10173

96-CR-12536 - OLIVE 3RD

THE NIEBOR
who set
Abused
me at 15. + 16.
gay guy

EXHIBIT 2

page 4

Booking Report #: 1025645

Booking Date/Time: 06/20/07 19:11

Name: RAMIREZ, ALBERT

DOB: [REDACTED]

City: CLOVIS, NM 88101

Phone: [REDACTED]

Physical Info

Age: 18
 Race: W
 Sex: M
 Ethnic:
 Height: 5'05"
 Weight: 108
 Hair: BLK
 Eyes: BRO
 Skin:
 Facial:

Other Info

JRN: 47316
 FBI:
 MID:
 SID: NOT REQUIR
 Mug #: 47316.JPG
 SSN: [REDACTED]
 Immig#:
 Fingerprint:
 OLN: NONE
 OLN State:



POB: CLOVIS, NM

Religion: NONE

School: CHOICES HIGH

Grade: 12 Stat: DROP OUT GED: N APS:

Dangerous: 2 Hate/Bias: NONE

Gang: NONE

Gang Moniker:

Scars / Tattoos: NONE

Employer

Date Time

Custody Officer 120 - MARTINEZ, S
 Custody Officer 120 - MARTINEZ, S
 Sport Officer 120 - MARTINEZ, S
 Probation Officer
 Admitting Officer D33 - CARVEY, T
 Fingerprint Officer D30 - MARQUEZ, D
 Detain Auth Officer A48 - LOZANO, M

06/20/07 16:15

06/20/07 19:11

Billing Agency # CPD CLOVIS PD
 Custody Agency # CPD CLOVIS PD
 Housing Facility CURRY CTNY ADC
 Arrest Location 300 N. CONNELLY
 Offense Location

Release Auth Officer 1 - MAG COURT
 Release Officer
 Release Type: Release To:
 Detainer 1:
 2:

00:00
00:00

Class: DETOX
 Points: 2
 Reason: DETOX

ACTIVE: Y Work Release: N Community Service: N Interpreter:

Attorney:

Comments:

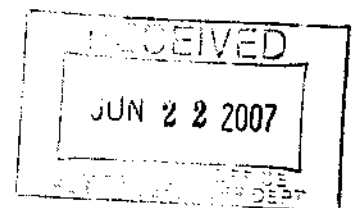
CHARGES/COURT INFORMATION

IBR #	NCIC #	Violation	Statute	Disposition	Date	Bond Amt/Type	Warrant #	Sentence
290	048	CRIMINAL DAMAGE	30-15.1	MISD	06/20/07	1000.00 C	M12MR200700472	MAGISTRATE


NE the Sex Abused
 Victim.

page 7

EXIBIT 2



Page 8

ROBLEDO, ELADIO 2007-03764	 AUTOPSY REPORT THE UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER OFFICE OF THE MEDICAL INVESTIGATOR <hr/> School of Medicine Albuquerque, New Mexico 87131-5091	1
---	--	---

POSTMORTEM EXAMINATION

An autopsy is performed on the body of Eladio Robledo at the Office of the Medical Investigator, State of New Mexico, on the 13th day of July 2007, commencing at 10:00 AM.

The examination is performed under the legal authority of the Office of the Medical Investigator of the State of New Mexico.

The body is received within a sealed body bag, with a "State of New Mexico, Office of the Chief Medical Investigator" evidence label, bearing the following printed and handwritten information: "Name of Deceased: Robledo, Eladio; Sealed by: 6.37; Date: 7-12-07".

MS. OK

EXTERNAL EXAMINATION

The body is that of a well developed, well nourished, adult, Hispanic male who weighs 145 pounds, is 72 inches in length, and appears compatible with the reported age of 39 years. There are pink and green OMI identification bands around the right wrist inscribed with identifying information.

The body is received clad in a pair of white brief-style underpants, which are partially cut off the body for resuscitation. There are no accompanying personal effects.

The body is cool. Rigor mortis is fully fixed. Minimally evident, blanchable purple livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure.

The scalp hair is black, wavy, and measures up to 2 inches in length over the crown. The irides are brown. The pupils are round. The corneae are translucent. The sclerae are white and the conjunctivae are clear. No petechial hemorrhages are identified on the sclerae, bulbar conjunctivae, facial skin or oral mucosa. The nose and ears are normally formed, without pierce marks. The decedent wears trimmed mustache and beard stubble. The teeth are natural and in good condition. The neck is unremarkable.

The thorax is well developed and symmetrical. The abdomen is flat. The anus is free of lesions. The spine is normally formed and the surface of the back is free of lesions.

The external genitalia are those of a normal adult male.

The upper and lower extremities are well developed and symmetrical, without absence of digits.

No identifying marks or scars are readily apparent.

Evidence of medical intervention includes an orotracheal tube (correctly placed), seven electrocardiograph patches and two defibrillator pads over the anterior chest, a right antecubital intravenous line, a left antecubital intravenous line,

8 The man who sex with abused my mom Exhibit 2

Page 8

Disposition

Transported to 9 PRMC/Clovis

Dest Determined by 06 Protocol

M- f Transport 1 Ground

Diverted To

A- y Tied With

Patient Disposition 01 Treated, Transported by EMS

Lights/Siren from Scene? Emergent, with lights or siren

Pulse on Transfer 2 No

Insurance

Type	Policy #	Group #	Insured Name
------	----------	---------	--------------

Patient Narrative

Ambulance 1 arrived at 512 West 6th with a report of a subject on the ground. Ambulance 3, Bill Baca and myself arrived at the same time. Patient was lying with his head to the north on his left side in a pool of blood. Patient was placed on a LBS board, placed on the stretcher and taken to the ambulance where IV's, O2 and intubation was being prepped.

EMS Personnel was asked to gown up and get ready to transport code 3. K Burns prepped to intubate the patient. Ben Black was assisting with airway procedures, Chris Elam, Mike Nolen and J. Boyd, worked on IV's, Bill Baca was hooking up the monitor, and spiking IV fluids for the lines that were being attempted. John Bradley was handing personnel equipment that requested additional supplies. Suction was prepared by Bill Baca since the patient's airway was full of blood. In trying to suction it was noted that we would get a tremendous amount of coagulated blood and mucous. Suction was not effective or we were able to get a clear site of the vocal cords. A Combi Tube was placed and lung sound were diminished on both sides when bagged with 100% O2.

The initial pulse was weak at the carotid, with blood and mucous streaming out the patient's mouth and nose. Once airway was established we felt for a pulse to find no pulse, but had an organized rhythm on the monitor. PEA was identified and the ACLS protocol was initiated as we arrived at PRMC. CPR was started, and bagging with 100% O2 was continued. We arrived at PRMC with patient moving the patient from the ambulance into C-2 where personnel stayed and helped staff with patient care.

It was noted that the patient was shot twice in the head, once in the chest, once in the abdomen, and once in the arm. Patient was never revived at PRMC and pronounced dead at 1405 by Dr. Patterson.

D - DISPATCHED;

On 07/12/2007 at 13:41:00 dispatched to 515 W 6TH ST /Clovis, NM 88101 for Shots Fired. 13:41:00 unit 24 en route.

C - CHIEF COMPLAINT;

13:43:09 unit 24 arrived to find a 39 year-old Male with a weight of 79.4kg./175lbs. patient complaining of Gun Shot to Patient.

H- HISTORY;

A - ASSESSMENT;

Ens found Traumatic Injury during assessment.

Patient's sign and symptoms are:

Rales
Crepitus
Hemorrhage
Contusion

R - TREATMENT;

The following medications, treatments, and vitals were performed on the patient:

Time: 13:44:00 Blood Pressure: 0/Palp Temperature: Not Assessed G Eye: 1

G Gx: 1 G Verbal: 1 Gcs Total: 3 Notes: Patient was lying in a pool of

Look AT THIS
175 pounds

EXHIBIT

EXHIBIT 3
Page 10

Defense counsel argued at the hearing that the doctor didn't administer neurological or intelligence tests, didn't review Mr. Ramirez's school records, didn't contact the juvenile probation office to find out about any prior psychiatric care or drug use, and only met with him for five or six hours. [CD 9/15/08 2:24:15, 2:31:15, 2:41:00]. Counsel maintained his belief that Mr. Ramirez was unable to assist in his defense and requested that Mr. Ramirez be sent back to Las Vegas for a more thorough competency evaluation, for his medications to stabilize, and to be administered neurological tests. [CD 9/15/08 2:41:00]. The district court denied Mr. Ramirez's request for another competency evaluation and declared him competent to stand trial. [RP 158-59].

Trial on the first degree murder and tampering with evidence charges was set for January 26, 2009. [CD 1/26/09 8:56:00]. That morning, the parties conducted jury selection. [CD 1/26/09 9:07:30-12:05:00]. During a break, the parties discussed a plea offer that had been previously made and were able to come to an agreement. [CD 1/26/09 3:03:15]. Pursuant to the agreement, Mr. Ramirez pled guilty to first degree murder and stipulated to a life sentence. [RP 300-302]. Prior to trial, Mr. Ramirez was also charged in separate cases with two counts of battery upon a detention officer and one count of assault. [RP 300-01, 333]. Under the plea, the two tampering with evidence charges were dismissed, as well as one of the battery charges, but he pled guilty to assault and battery against a detention

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EXHIBIT 3

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EXHIBIT 3

page 11

Projected Date of Discharge: Within approximately 9 months.

Patient's Level of Participation in the Plan: At this time, Mr. Ramirez seems to willing to cooperate with his treatment plan.

Family/Support System Input/Desires: Evaluation is ongoing.

Legal Considerations Which May Impact Treatment: Mr. Ramirez has criminal charges pending. He is here on a court order for treatment to attain competency.

Least Constrictive Conditions for Treatment: Mr. Ramirez was ordered by the court to remain in a secure locked facility during the time of his evaluation and course of treatment.

Criteria for Transfer to a Less Restrictive Setting: As per court order.

Discharge Criteria: As per court order.

Potential Barriers to Discharge and Strategies to Overcome Them: Evaluation is ongoing.

Recommended Follow-up Treatment, Living, Skill, and Support Requirements: To be reassessed at the time of discharge.

Anticipated Length of Stay: Approximately 9 months.

Discharge Plan: As per court order.

Yunior J. Llanos Jr.
CHRIS S. MANZANARES, LBSW
Staff Social Worker

Date: 6/18/19

CSM/AHS-644
D: 06/16/2008 1819
T: 06/16/2008 2356
J: 532576

EXHIBIT 3

June 16, 2008
FTUD

EXHIBIT 3

RAMIREZ, ALBERT
MR: 42819

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MENTAL HEALTH RESOURCES, INC. **OUTPATIENT CLINICAL ASSESSMENT**

* Please note: clinical assessment must be completed within 30 days of admission

Initial: ☒ Annual update: 1st year ☐ 2nd year ☐ year ☐ Client ID # 4393 Completion Date: 11/8/17

I. PATIENT INFORMATION

Client Name: (Last) Ramirez First: Alberto MI: Male: ☐ Female: ☐

Client's primary residence

☐ Their Home (house, apartment, room) ☐ Friend's home ☐ Relative's home ☐ Group home ☐ Foster Care
☐ Jail ☐ Nursing home ☐ Assisted Living ☐ Shelter ☐ Currently Homeless ☐ Other

Phone: Address: City: MOVB State: NM Zip: 88101

Client Age: 19 DOB: Soc. Sec: Marital Status: ☐ Mar. ☒ Sin. ☐ Div. ☐ Wid. ☐ Sep ☐ other

Race: ☒ White ☐ Native Am. ☐ Black/African ☐ Am Asian ☐ Pacific Islander ☐ Alaska Native
 Ethnicity: ☒ Hispanic ☐ Mexican ☐ Cuban ☐ Puerto Rican ☐ Latino ☐ Not Hispanic Origin ☐ Mexican Am. ☐ Central Am. ☐ South Am.

Parent/Guardian/Custodian/Power of Attorney if Minor (include name & address) NONE Parent/Guardian/Custodian Phone () N/A

Emergency Contact (include name & address) Hesigua Ramirez 220 Chaparral Relationship to the Client: Sister Emergency Contact Phone (505) 762-7496

Referral Source (please give specific name): Self Household Annual Income: 0 Client Annual Income: 0 Household income source: 0 Client incomes source: ✓

Employer's Name: N/A Phone: N/A School: N/A Ed. Level: 13

Current PCP: N/A Address: N/A Phone: N/A

Please give a brief description of the presenting problem, including source of distress, precipitating events associated problems and symptoms: Client feeling sad, mad, exp. psychosis, mood variability

Le problems: ☐ No ☒ Yes Explain: currently facing charge of murder

If the client is a minor please describe the following in relation to Psychosocial/Developmental history: N/A

Psychological functioning:

Intellectual functioning:

Educational/vocational functioning:

Social functioning:

Developmental functioning:

Substance abuse:

Culture:

Leisure and recreation:

II. RISK ASSESSMENT

A. ☒ No current risk at the time of this assessment

B. Have you ever thought about harming yourself or someone else? ☒ No ☒ Yes, if yes, did you have a plan? ☒ No ☐ Yes

When was the last time you thought about harming yourself or someone else? November 1, 2007

C. Have you ever harmed/injured yourself or someone else intentionally? ☒ No ☐ Yes, if yes, did you have a plan? ☒ No

☐ Yes. When was the last time you thought about harming yourself or someone else?

ONLY complete the rest of the risk assessment questions, if the response to section B or C is yes

(note: complete section D if the risk is harm to self and/or section E if the risk is harm to others)

D. Risk of harm to Self: Indicate which of the following suicide (harm to self) risk factors apply to the person:

Prior suicide attempt: ☒ No ☐ Yes Behavioral cues (isolation, impulsivity, withdrawn etc): ☒ No ☐ Yes

Repeated attempts: ☒ No ☐ Yes Symptoms of psychosis (command hallucinations): ☐ No ☒ Yes

Stated plan with intent: ☒ No ☐ Yes Family history of suicide: ☒ No ☐ Yes

Access to means (e.g., weapon): ☒ No ☐ Yes History of suicide in friend: ☒ No ☐ Yes

Substance use: ☒ No ☐ Yes Terminal physical illness: ☒ No ☐ Yes

Other self-injurious behaviors: ☒ No ☐ Yes Current stressors: ☐ No ☒ Yes

Recent losses/ lack of support: ☐ No ☒ Yes Others: ☒ No ☐ Yes

Please provide explanation(s) for any of the above risk factors that were indicated with a yes response: (heart attack)

SE/H7 but returned to on 11/1/07 staying on the back track in a room

Mental Health Resources, Inc. Outpatient Clinical Assessment (Version 5.11.07) Page 1

page 13

Client Name: <u>Aibuti, Ram, Jr.</u>		File #: <u>9393</u>	
IV Psychiatric (cont)			
F. SYMPTOMS SCREENING			
Depression	<input checked="" type="checkbox"/> usual depressed mood <input type="checkbox"/> anhedonia <input type="checkbox"/> weight loss <input type="checkbox"/> weight gain <input checked="" type="checkbox"/> sleep disturbance <input type="checkbox"/> psychomotor retardation/agitation <input type="checkbox"/> fatigue <input checked="" type="checkbox"/> worthlessness <input type="checkbox"/> guilt <input checked="" type="checkbox"/> poor concentration <input type="checkbox"/> suicidal ideation <input checked="" type="checkbox"/> hopelessness <input checked="" type="checkbox"/> anxiousness <input type="checkbox"/> decreased energy/motivation <input type="checkbox"/> uncontrollable crying spells		
Anxiety	<input type="checkbox"/> restlessness <input type="checkbox"/> easily fatigued <input type="checkbox"/> poor concentration <input type="checkbox"/> irritability <input type="checkbox"/> muscle tension <input type="checkbox"/> sleep disturbance <input type="checkbox"/> excessive anxiety and worry <input type="checkbox"/> inability to control worry		
Phobia/ Panic	<input type="checkbox"/> abrupt development of panic attacks accompanied by palpitations: <input type="checkbox"/> sweating <input type="checkbox"/> trembling <input type="checkbox"/> shortness of breath <input type="checkbox"/> feeling of choking <input type="checkbox"/> chest pain <input type="checkbox"/> nausea <input type="checkbox"/> dizziness <input type="checkbox"/> light headedness <input type="checkbox"/> derealization <input type="checkbox"/> fear of losing control <input type="checkbox"/> fear of dying <input type="checkbox"/> numbness <input type="checkbox"/> chills <input type="checkbox"/> hot flashes <input type="checkbox"/> agoraphobia <input type="checkbox"/> excess/persistent fear of stimuli avoidance		
Mania	<input type="checkbox"/> grandiosity <input checked="" type="checkbox"/> decreased sleep <input checked="" type="checkbox"/> talkativeness <input checked="" type="checkbox"/> flight of ideas <input checked="" type="checkbox"/> distractibility <input type="checkbox"/> increased goal directed activity <input type="checkbox"/> increased anxiety/agitation <input checked="" type="checkbox"/> elevated/expansive <input checked="" type="checkbox"/> irritable mood <input checked="" type="checkbox"/> pressured speech <input checked="" type="checkbox"/> psychosis <input type="checkbox"/> increased compulsive/addictive behavior		
Post traumatic stress	<input type="checkbox"/> experienced traumatic event (event: _____ date: _____) <input type="checkbox"/> re-experiencing trauma avoidance of stimuli associated with trauma <input type="checkbox"/> increased physical/emotional arousal dissociative symptoms <input type="checkbox"/> amnesia		
Psychosis	<input checked="" type="checkbox"/> hallucinations <input checked="" type="checkbox"/> delusions <input checked="" type="checkbox"/> paranoia <input checked="" type="checkbox"/> disorganized speech <input type="checkbox"/> bizarre/catatonic behavior <input checked="" type="checkbox"/> flat or inappropriate affect		
Organicity	<input type="checkbox"/> decreased consciousness <input type="checkbox"/> impaired memory <input type="checkbox"/> perceptual disturbance <input type="checkbox"/> impaired intellectual functioning <input type="checkbox"/> impaired judgement <input type="checkbox"/> labile affect		
Impulse Control	<input type="checkbox"/> property destruction <input type="checkbox"/> explosive/assaultive behavior <input type="checkbox"/> inability to control destructive impulses <input type="checkbox"/> pleasure gained from acting out <input type="checkbox"/> gambling <input type="checkbox"/> kleptomania <input type="checkbox"/> pyromania <input type="checkbox"/> trichotillomania		
Substance Abuse	<input checked="" type="checkbox"/> failure to fulfill major role obligations <input checked="" type="checkbox"/> physically hazardous use <input checked="" type="checkbox"/> legal problems <input checked="" type="checkbox"/> use in spite of negative psychosocial consequences		
Substance Dependence	<input type="checkbox"/> tolerance <input type="checkbox"/> withdrawal <input checked="" type="checkbox"/> using more than intended <input type="checkbox"/> unsuccessful efforts to quit <input checked="" type="checkbox"/> increased time spent obtaining/recovering <input checked="" type="checkbox"/> reduction in psychosocial functioning <input checked="" type="checkbox"/> continued use in despite negative consequences		
Attention Deficit Symptoms	<input type="checkbox"/> inattention <input type="checkbox"/> hyperactivity <input type="checkbox"/> impulsivity functional impairment at:		
Anti-Social Conduct	<input type="checkbox"/> aggressive behavior toward people/ animals <input type="checkbox"/> stealing <input type="checkbox"/> lying <input type="checkbox"/> vandalism <input type="checkbox"/> violating rules at school/home/community		
Oppositional Conduct	<input type="checkbox"/> losing temper arguing <input type="checkbox"/> defiance annoying others <input type="checkbox"/> blaming others <input type="checkbox"/> denying problems <input type="checkbox"/> easily agitated angry/resentful <input type="checkbox"/> spiteful/vindictive		
Other Symptomology	<input checked="" type="checkbox"/> frustration <input checked="" type="checkbox"/> mood lability <input type="checkbox"/> running away <input type="checkbox"/> separation anxiety <input type="checkbox"/> developmental delay <input type="checkbox"/> learning difficulties <input type="checkbox"/> adjustment issues <input type="checkbox"/> below average IQ <input type="checkbox"/> autism <input type="checkbox"/> verbal/motor tics <input type="checkbox"/> encopresis <input type="checkbox"/> enuresis <input type="checkbox"/> neurological deficits <input type="checkbox"/> school problems <input checked="" type="checkbox"/> maladaptive family issues <input checked="" type="checkbox"/> low self esteem <input type="checkbox"/> peer relationship issues <input type="checkbox"/> gang involvement <input type="checkbox"/> blended family issues <input type="checkbox"/> truancy <input type="checkbox"/> sexual promiscuity <input type="checkbox"/> sexual identity <input type="checkbox"/> somatization <input type="checkbox"/> conversion <input type="checkbox"/> hypochondria <input type="checkbox"/> producing physical symptoms <input type="checkbox"/> malingering <input type="checkbox"/> intrusive obsessions/compulsions <input type="checkbox"/> pathogenic personality <input type="checkbox"/> sexual dysfunction <input type="checkbox"/> paraphilia dyssomnias <input type="checkbox"/> self mutilation <input type="checkbox"/> dissociative states <input type="checkbox"/> bereavement <input type="checkbox"/> recent physical injury <input type="checkbox"/> chronic illness <input type="checkbox"/> anorexic bulimic behaviors		

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Rational Standard for Competency-to-Stand-Trial Assessments, 22 Journal of Am. Acad. Psychiatry and Law, 231, 237 (2004). Mr. Ramirez argues, consistent with the article, that two separate evaluators came to different conclusions and that, in light of the problems in Dr. Burness' methodology—not administering neurological or intelligence tests, not reviewing Mr. Ramirez's school records, not contacting the juvenile probation office to find out about any prior psychiatric care or drug use, and meeting with him for only a few hours—this is like “flipping coins in the courtroom.” *Id.*

Because the district court abused its discretion in denying Mr. Ramirez's request for a more thorough competency hearing, this case should be remanded for a new trial with instructions to order another competency evaluation for Mr. Ramirez.

Issue 3: Mr. Ramirez Received Ineffective Assistance Of Counsel.

Mr. Ramirez relies upon his arguments in the brief in chief in support of this issue.

II. CONCLUSION

For the forgoing reasons, the trial court abused its discretion in denying Mr. Ramirez's motion to withdraw plea, and denying his request for a more thorough competency hearing, and the case should accordingly be remanded to the district court for trial, or alternatively, an evidentiary hearing to determine whether the plea

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Ramirez, who was 18 years old when he said he shot Robledo, has a history of mental illness, according to family members, three of whom testified Thursday as defense witnesses.

A psychologist found Ramirez competent to stand trial.

Cosby struggled to keep Ramirez on point through much of his rambling testimony, drawing objections from Chandler and repeated instructions from Hartley to simply answer Cosby's questions.

Ramirez said he purchased the .22 caliber handgun he used in the homicide to protect himself from gang members who had threatened him. He said he had no intention of shooting or killing Robledo.

Ramirez said he went to the home Robledo had kicked him out of to get his clothing and electronic gadgets. No one was in the house and his room was padlocked shut, he said, so he went looking for Robledo in the garage behind the house.

Ramirez said he and Robledo got in an argument and Robledo backhanded him across the face.

"I was scared," said Ramirez, his voice quaking. "He (Robledo) spoke in Spanish and said he was going to get his pistola."

Ramirez said Robledo then hit him with his fists and started choking him.

"My only option was to shoot. He tried to take the gun (away) and shoot me."

During an hour-long grilling by Chandler on cross examination, Ramirez admitted he gave a stranger \$30 to purchase a \$10 box of bullets for the handgun at the Clovis Walmart the day before the homicide. Chandler also confronted Ramirez with testimony that no bruises were found on his neck when arrested three days later and no bruises were found on the victim's body or hands.

"The fact of the matter," said Chandler, "is it (the fight) didn't happen. He didn't punch you did he?"

"Yes he did," said Ramirez.

Chandler said testimony from previous witnesses was that Ramirez was seen chasing down Robledo after shooting him twice in the chest and the victim fell to the ground.

"Eladio was lying on the ground dying and you shot him in the head," Chandler charged.

"I shot towards the ground," said Ramirez. "I didn't know where I hit him."

A state medical examiner testified earlier that Robledo died of the wounds to his chest and two bullets fired into his right temple.

Ramirez also admitted during Chandler's cross examination that he hit a girl in the face "who was beating up my cousin" and head-butted a police officer in other unrelated violent confrontations.

Hesiquia Ramirez testified her brother "had his own little issues" with mental illness long before the homicide.

During a confrontational cross examination, Chandler challenged her, noting discrepancies in her testimony and what she told police on the day of the killing.

As her brother was taken from the courtroom at the conclusion of the day, Hesiquia waved to Ramirez and said "Love you" in a hushed tone.

The jury is expected to get the case after closing arguments today.

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☐ Yes.

☐ No.

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FORENSIC NEUROPSYCHOLOGICAL EVALUATION

(CONFIDENTIAL)

This report is confidential, and unless its release is in accord with the rules of criminal or civil procedure, it should not be released to anyone without written consent of the defendant. While the defendant does have a right to see this report, it is strongly recommended that (s) he do so in the presence of the psychologist so that the findings and results can be properly interpreted and any questions or concerns can be addressed. If the report is given to the defendant by anyone other than a psychologist, it is highly likely that (s) he can misunderstand the report's content, and the information may not necessarily present him/her in a favorable light.

NAME: RAMIREZ, Albert Jose
DOB: [REDACTED]
AGE: 19 years-old
SS#: [REDACTED]
COURT NUMBER: D-905-CR-0200700434
EXAMINER: Maxann Shwartz, Ph.D.
DATE(S) OF EVALUATION: 03/10/2008
DATE OF REPORT: 03/14/2008
REFERRED BY: Brett J. Carter
Counsel for Defense
State of New Mexico/Curry County
Ninth Judicial District

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EXIB. 4+5
She would have testified this in court

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
10:24:46 AM		WHO ELSE DID YOU CALL, HE WAS NOT A FRIEND, I TOLD HIM TO GET THE THING, DO YOU KNOW OF ANYBODY HAS THAT GUN
10:25:33 AM		THERE WAS A GUY IN FRONT OF STORE OF RAGS TO RICHES I BELIEVE HE GOT THE GUN, I JUST HAD SOX AND BOXERS
10:26:34 AM		DID YOU PLAN ON KILLING MR. ROBLEDO "NO"
10:27:11 AM		WERE YOU THERE THAT DAY TO AMBUSH YOUR MOM'S BOYFRIEND "CAN I SPEAK MY MIND", IF I WANTED TO KILL MY MOM OR ROBLEDO, I COULD GO IN THERE AND GO TO MY ROOM AND GET SOMETHING TO EAT. ETC.
10:28:14 AM		WHEN HE TOLD YOU HE WAS GOING TO GET PISTOLA "THAT IS A PISTOL" THAT WAS NOT HIS AMMO IN GARAGE
10:28:59 AM		I KNEW HE HAD A WEAPON, I USED TO SMOKE MARIJUANA I WAS LOOKING FOR MONEY AND I SAW A GUN IN HIS DRAWER
10:29:40 AM		I THOUGHT I WAS IN DANGER
10:29:53 AM		BENCH CONFERENCE
10:30:37 AM	COURT	GONNA TAKE A BREAK
10:31:21 AM		JURY EXCUSED FROM COURTROOM
10:31:36 AM	OFF RECORD	
11:03:22 AM		COURT IN SESSION JURY BEING SEATED IN BOX, DFT AND ALL PARTIES PRESENT
11:03:58 AM	COURT	INSTRUCTS JURORS GOING TO AN EARLY LUNCH BE BACK BY 12:45 P.M.
11:04:37 AM	RECESS	
12:49:46 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES ARE PRESENT
12:50:29 PM	CHANDLER	DFT PUT FORWARD THAT THE VICTIM WAS A FIRST AGRESSOR, ANY TYPE OF SPECIFIC CONDUCT
12:51:31 PM		WHAT TRAIT DO YOU THINK IS DELIBERATE AND WILLFUL MURDER
12:51:52 PM	CHANDLER	RESPONDS, NOW WE HAVE AN OPPORTUNITY THAT OUR VICTIM WAS NOT THE AGRESSOR
12:52:26 PM	COSBY	AS FAR AS THE SITUATION OF THE JAILER, HAD NOTHING TO DO WITH HIS CHARACTER ETC.
12:52:50 PM	CHANDLER	READS RULE 404-A-2 SEC. B
12:54:32 PM	COURT	WILL LET YOU GO AHEAD AND DO IT, BETTER WAY TO DO IT
12:54:50 PM	COSBY	I WILL ASK YOU TO RE VISIT SEXUAL ISSUE
12:55:21 PM	COURT	OBJECTION NOTED
12:55:43 PM	DFT	COMMENTS

10/10/2013

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16. Photo (exhibit 10d)
17. Media Advisory Clovis Police Department (exhibit 10e)
18. Grah's notes/ Action Sheet (exhibit 10f)
19. Inmate Calling Solutions (exhibit 10g)
20. Plateau Wireless (exhibit 10h)
21. Call Records 505-309-7772 (exhibit 10i)
22. SMS Records 505-714-2165 (exhibit 10j)
23. Call Records 505-309-4299 (exhibit 10k)
24. Call Records 505-309-7759 (exhibit 10l)
25. Master Name Inquiry (exhibit 10m)
26. Curry County Detention (exhibit 10n)
27. Photo Lineup (exhibit 10o)
28. Curry County Detention (exhibit 10n)
29. #1 Value Inn Guest Registration (exhibit 10r)
30. State of New Mexico, Ninth Judicial District, Office of the District Attorney (exhibit 10s)
31. Information from John Garcia to Roger Grah (exhibit 10t)
32. Photo Lineup (exhibit 10u)
33. The University of New Mexico (UNM) Office of The Medical Investigator (exhibit 10v)
34. Index- List of Exhibits

PSYCHOLOGICAL TESTS/PROCEDURES ADMINISTERED

- ⑤ • Structured Clinical Interview
- ④ • Review of List of Exhibits
- ① • Mental Status Exam (MSE)
- ② • Mini Mental Status Exam (MMSE)
- ⑥ • Trail Making Test
- ⑦ • Clock Face
- ⑧ • Portions of The Revised Competence Assessment Instrument

➤ Mental Status Examination:

Behavioral Observations:

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male who was unable to be evaluated due to grossly disorganized behaviors consistent with the positive symptoms associated with a psychotic disorder, including but not limited to: disorganized thinking; rambling, nonsensical speech; paranoia; depersonalization; reports of auditory hallucinations; labile mood; inappropriate affect; loose associations; and poor reality testing. Mr. Ramirez was dressed in the required uniform of the Curry County

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5 Detention Center and had his undershirt on backwards. Mr. Ramirez was unable to perform even simple, goal-directed tasks. He maintained minimal to no eye contact. He evidenced uncontrollable crying throughout the evaluation with uncontrollable shaking. His attorney, Brett Carter, was present in attempt to calm him down and encourage him to participate in the evaluation. Food (McDonald's) was also used as a reinforcer and as an attempt to calm him down. While Mr. Ramirez was eating, he appeared to be more placated and was able to answer several questions. Specifically, he elaborated on being abused by several people, including his foster dad (physical abuse), a neighbor (sexual abuse) and his mother's boyfriend (sexual abuse). However, the majority of his responses to this examiner's questions were answered with "I don't know," or "that's all I know." Otherwise, he attempted to cooperate but eventually would start crying and become hysterical. Occasionally, he was able to provide several coherent and logical responses, however, his thinking would then be followed with tangential remarks with frequent references to his foster dad or paranoid verbalizations, i.e. "I'm scared of everyone. That's all I know. There's something wrong with my mind." For the most part, he was unable to provide any relevant background history. Mr. Ramirez was questioned numerous times about what happened regarding his alleged charge of murder and replied each time with "I used to be a good kid," or "I wasn't like this," and "I just want to talk to my mommy." Mr. Ramirez was unable to read as he could not maintain attention or concentration. He was given the Trail Making Test and was unable to complete one Trail. In sum, he was unable to complete any standardized testing procedures. (S) (P)

Orientation: He was oriented to person, but was poorly oriented to time, date, or location.

Affect/Mood: Mr. Ramirez' mood was labile with congruent affect. He stated that his mood was "very depressed, very bad...I'm so depressed!"

Perception/Thought Process: His thought process was tangential and loose. His thinking was easily derailed as he evidenced paranoia with depersonalization, i.e. "I can't feel my arm that much...I don't know," "I wasn't like this," and "What happened...the real me is full of pain." He acknowledged that he experiences auditory hallucinations, stating "I hear people talking in my head...saying kill myself." He denied visual hallucinations. He presented with frank paranoid ideations.

(2) Mini Mental Status Exam: Mr. Ramirez was administered the Mini Mental Status Examination (MMSE), a widely used screening instrument used to assess cognitive impairment. His results were within the severely impaired range (16/30) and appeared to be due to the presence of a functional psychosis. Mr. Ramirez exhibited poor immediate memory, concentration, and attention.

Memory: His overall memory appeared questionable, e.g. he could not remember the city where he was born.

Judgment/Insight: Impaired/Impaired

desist
Hysterical

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Communication: His speech was pressured and rambling. At times, he was able to comprehend questions but was unable to provide consistent or appropriate responses.

Sleep/Diet: Mr. Ramirez reported "I can't sleep at all...I have physical pain and mental pain...I hear people talking in my head." He indicated that his appetite fluctuates and that he has lost weight since being incarcerated.

Suicidal Ideation, Intent, or Plans: He denied a history of suicidal ideations, intent, plans, or attempts, stating "No, they'll put me in that little room."

Substance Abuse History: Mr. Ramirez acknowledged using illegal drugs and alcohol in the past.

Current Medical/Physical Concerns and Medications: He denied past or present use of medications, including being prescribed psychotropic medications.

Current Mental Health Status: Mr. Ramirez presented with symptoms associated with a significant mental illness, including heightened instability of mood. Specifically, he evidenced a mixture of characteristic signs and symptoms involving a range of cognitive and emotional disturbances that may be associated with the initial onset of a psychotic disorder.

DIAGNOSTIC IMPRESSIONS

RULE OUT-

Axis I: 295.30
295.70
309.81

Schizophrenia, Paranoid Type
Schizoaffective Disorder, Bipolar Type
Posttraumatic Stress Disorder, Chronic

Axis II: 799.9 Diagnosis Deferred

Axis III: Defer to Physician Report

Axis IV: Legal Problems

Axis V: 30

CONCLUSION

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male, with no known documented history of mental illness. However, throughout the evaluation, he evidenced a constellation of symptoms characteristic of Schizophrenia, including paranoia, psychoses, loose associations, disorganized thinking, poor reality testing,

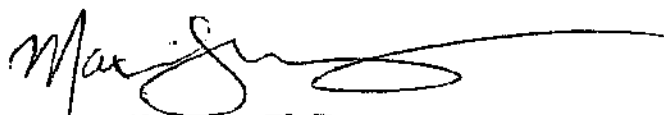
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depersonalization, inappropriate mood and affect, and poor judgment, reasoning, and insight. Mr. Ramirez reported numerous times "There's something wrong with my mind." Because of his current mental state, he was unable to complete a formal evaluation.

Based on his current presentation, Mr. Ramirez is not capable of competently proceeding with adjudication and handling the stress associated with the legal process. In his current state, he has been unable to assist his attorneys in his defense as he is unable to communicate in a logical or rational manner. He is also unable to provide any assistance to his attorneys regarding pertinent circumstances or events that led to his arrest in reference to the alleged charges. It is therefore the opinion of this examiner, that Mr. Albert Ramirez is not competent to stand trial.

Thank you for your referral.

Respectfully submitted by:



Maxann Shwartz, Ph.D.
Licensed Psychologist

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COURT: Ninth Judicial District Court
Curry County
State of New Mexico

PLACE OF EVALUATION: Curry County Courthouse
Clovis, New Mexico

Reason for Referral and Charges

The defendant, Mr. Albert Ramirez, was referred for a Forensic Neuropsychological Evaluation to provide information regarding his current cognitive, psychological, and emotional functioning. Mr. Ramirez' attorneys have expressed concern regarding his competence to stand trial as he has been unable to discuss any aspect of the case with them, despite numerous attempts. They have also described his behavior as bizarre with confused and disorganized thinking. His overall functioning will be evaluated in terms of his competency to stand trial. Mr. Ramirez has been charged with Murder (Open Count) and Tampering with Evidence (2 counts), for events that occurred on or between July 12, 2007, in Curry County, New Mexico. Mr. Ramirez is incarcerated at the Curry County Detention Center (CCDC).

New Mexico Criteria for Determining Competence

(1) The Client must have a factual understanding of the charges and legal proceedings, (2) The Client must also have a rational understanding of the charges and legal proceedings, and (3) The Client must have the ability to assist his or her attorney (State vs. Rotherham, 1996).

Note:

The following report and opinions are based on information made available to the psychologist at the time of the evaluation. Unless specifically noted, there has not been a systematic effort made to substantiate the full accuracy of all of the information provided in this report. The report is based on the assumption that the information provided is reasonably accurate, unless noted to the contrary. The psychologist reserves the right to modify opinions or conclusions, if additional information relevant to the findings is provided at a later date.

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Disclosure of Limits of Confidentiality and Informed Consent

Prior to the initiation of the forensic evaluation, Mr. Albert Ramirez was informed of the purpose of the evaluation, about my role as a forensic psychologist, that his participation was voluntary, and that the information that he provided in the evaluation may not be confidential. The defendant was unable to communicate that he understood the purpose of the evaluation and that he was going to undergo a forensic evaluation. He was then informed that information from the evaluation would be provided to the Court regarding his current cognitive and intellectual capabilities and that the information he provided was not confidential. The defendant consented to proceed with the evaluation by signing the "Statement of Rights and Limits of Confidentiality" disclosure form, which was explained to him and outlines the purpose of the evaluation.

Mr. Ramirez was informed that he has the right to refuse to participate in the evaluation or answer specific questions, and the fact that in addition to his attorneys, the report and/or information may be disclosed to the Court and/or the prosecution trial attorneys. He was also informed that the psychologist may also be asked to testify with regards to information gathered in the evaluation. The defendant attempted to participate in a structured clinical interview, but was unable to complete the interview or participate in neuropsychological and psychological tests and questionnaires, or complete a competency test due to his current psychological and emotional state. As a result, the testing session lasted a total of 3.0 hours. The evaluation was conducted in an adequate environment and the results are believed to represent a valid measure of the defendant's current cognitive and emotional functioning and status.

SOURCES OF INFORMATION:

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1. Clinical interview with Mr. Albert Ramirez (defendant)
2. Interviews with Brett Carter and Chandler Blair (attorneys for defendant)
3. Request For Expert Witness/Investigator
4. Clovis Police Department
 - a. Investigative Report: Randy Pitcock, Detective; 7/12/07
 - b. State of New Mexico Uniform Incident Report; 7/12/07
 - c. State of New Mexico Supplemental Report; 7/13/07
 - d. Supplemental Report Narrative; 7/23/07
 - e. Supplemental Report: Homicide; 7/12/07
 - f. Supplemental Report: Officer Antonio Bosque; 7/13/07
 - g. Felony Case File- Ivan Vasquez (exhibit 9)
 - h. Criminal Trespass Notification (exhibit 10p)
 - i. State of New Mexico Uniform Incident Report; 6/21/07; (exhibit 10q)

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consists of five scales, i.e., Psychosis; Neurologic Impairment; Amnestic Disorders; Low Intelligence; and Affective Disorders. The total score on this measure is identified as being the most useful for differentiating exaggerated from non-exaggerated symptoms. SIMS total scores equal to or greater than fourteen are suggestive of symptom exaggeration. Mr. Ramirez's score on this measure was 47.

9 Additional review of the SIMS scale scores is notable for elevation. Specifically, his scores suggest an endorsement on all five scales with the highest elevations being on the Neurologic impairments and the Amnestic disorders scales. He also over endorsed the Psychosis as well as the Affective functioning scales. The lowest elevation was found on the Low Intelligence scale.

This pattern of responses provides evidence of Mr. Ramirez's tendency to exaggerate a range of cognitive and psychiatric symptoms. Mr. Ramirez has reported to this examiner that he does not want to return to the Detention Center as he describes his previous behavior in Detention as "not good...crying, screaming, yelling, kicking walls I was angry 'cos they wouldn't give me my meds".

CASE FORMULATION

Mr Ramirez is a 19 year old Hispanic male admitted to the Forensic Division of the New Mexico Behavioral Health Institute at Las Vegas (NMBHI) on 5th June 2008. A Court finding of incompetence to stand trial, and subsequent commitment for treatment to attain competency to proceed in a criminal case was approved on 17th April 2008. Mr. Ramirez is currently charged with one open count of Murder in the first degree, and two counts of Tampering with Evidence for events that allegedly occurred on July 12th 2007.

Mr Ramirez appears to have had a disrupted childhood, despite his assertion that his mother was raising him well the fact that he was in two foster placements suggests that he was demonstrating difficult to manage behaviors. This was confirmed by Mrs Ramirez. Mr Ramirez also attended special education and became involved with the criminal justice system at an early age prior to 16. His behavior appears to have spiraled downwards to the point where he is alleged to have committed first degree murder. Mr Ramirez has reported sexual and physical abuse however given his tendency for over reporting and his clear need to externalize blame for his actions on others it is difficult to ascertain the validity of this reported abuse. Mr Ramirez mother stated that her boyfriend (the victim on the alleged offence) had never abused Mr Ramirez and that he was jealous of her boyfriend.

Mr Ramirez demonstrates difficult to manage behaviors however in this examiner's opinion these are the result of his personality style rather than as a consequence of mental illness. He does demonstrate difficulties in managing his mood and controlling his impulsive behavior but as previously stated in my clinical opinion this is the result of his personality style and an inability to take responsibility and consider the consequences of his actions.

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RAMIREZ Albert Jose
HEALTH RECORD #42819

Final Forensic Report

THE NEW MEXICO BEHAVIORAL HEALTH INSTITUTE at Las Vegas
FORENSIC DIVISION

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Mrs Ramirez reported that she put Mr Ramirez out of her home as a result of him b violent manner and smashing windows in her car and house. She also reported that was verbally abusive toward her and this has been confirmed by staff at this facil heard Mr Ramirez being verbally abusive toward his mother over the telephone. reported that she had a restraining order in place against Mr Ramirez following her car windows and that he violated this order both on the day of the instant off day before. She also reported that Mr Ramirez was jealous of her boyfriend.

MEDICAL HISTORY

Mr Ramirez also provides a highly convoluted and unbelievable story of his arms being permanently damaged as a result of having to drive a car with manual transmission all day. He will attempt to present evidence of his physical impairment by showing the examiner his arm, which has no physical defects. He also has a story of walking on crutches and having his knee bandaged in a manner that no medical facility would ever sanction. He was examined by the medical physician back in County Detention in Curry where he made repeated daily efforts to get medical attention until the physicians refused to grant further medical evaluations. He has also been examined by the medical physician at this facility and despite continuous complaints of chronic pain and stating he is hunch backed, he has no acute or chronic medical concerns.

SUBSTANCE ABUSE HISTORY

Mr Ramirez reported that he has smoked Marijuana and that his prior criminal history has been associated with smoking marijuana. He has endorsed using cocaine, crack cocaine and methamphetamines in the past. In addition the police officers reported that they could smell alcohol on his breath at the time of arrest for prior offences.

ABUSE HISTORY

Mr Ramirez has reported physical abuse at the hands of his foster father and sexual abuse by his mother's boyfriend and a neighbor. However, it is notable that he reports that his mothers' boyfriend (the victim in the alleged offense) and the neighbor were gay and that they were lovers which is why they abused him. Given that the neighbor is also a witness to the alleged offences however, it is this examiners opinion that this report of abuse and the sexual orientation of these two men is highly suspect.

CRIMINAL HISTORY

Mr Ramirez reports that his only prior criminal history has been in relation to smoking Marijuana and he alleges that one of these charges was an accident as he did not know the cigarette contained marijuana. This examiner did not have access to an NCIC or his Juvenile record however a police report relating to a prior arrest includes the charges of Larceny (under \$250.00, Evading a Peace Officer and Possession of Marijuana.

PSYCHIATRIC HISTORY

There is no indication from Mr Ramirez's records that he has ever required inpatient or out patient psychiatric intervention. He reports that he did see a counselor and this was related to "anger management" however, there is no evidence of any prior mental illness despite Mr Ramirez reporting a history of depression and anxiety and stating that he was on seven

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Based on the facts in the record, Defendant sensibly does not claim he suffered prejudice from this asserted deficiency in Mr. Cosby's performance. Considering Defendant's history of refusing to cooperate in evaluations, there can be no confidence he would have cooperated even if Mr. Cosby had arranged an emergency evaluation. And, considering the trial court's first-hand observations of Defendant's behavior and dilatory conduct over the course of six years, there is no assurance the trial court would have found Defendant incompetent even if an evaluation concluded otherwise.

Second, Defendant claims Mr. Cosby was deficient because his failure to arrange for expert testimony precluded Defendant from relying on mental illness or lack of capacity defenses. [BIC 37-38] At the same time, Defendant effectively concedes Mr. Cosby's performance was not deficient in this regard by acknowledging the prosecution was prepared to offer rebuttal expert testimony to the effect that Defendant was feigning mental illness and cognitive deficiencies.

[Supp. CD, 3:51:50 to 3:52:12, 3:57:00 to 3:57:33, 4:01:06 to 4:01:24, 4:08:54 to 4:09:13] This indicates Mr. Cosby's decisions may have represented "a plausible, rational strategy or tactic," which is the antithesis of incompetent performance.

This specific claim of deficient performance also lacks support in the record, because Defendant repeatedly refused to cooperate in evaluations that *might* have

73 I counted this as
BUTNESS 1122 I claim v. B. t. 4.5
comply.

EXH 4.5

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1 competent to make the choice whether or not he should testify. The court advised
2 Defendant of his right. Defendant stated that he was mentally imbalanced and he
3 wanted the jury to be told about his medical problems. The court found that the
4 concerns represented personal issues not rising to the level of incompetence and
5 denied the motion.

6 (24) Rule 5-602(B)(2)(b) requires that “[i]f the issue of the defendant’s competency
7 to stand trial is raised *during trial*, the trial jury shall be instructed on the issue.”
8 (emphasis added). The reasonable doubt requirement “is implied” under Rule
9 5-602(B)(2)(b) when the issue of competency is reraised at trial. *Rael*,
10 2008-NMCA-067, ¶ 22 (“[I]f a requirement of reasonable doubt were not read into
11 Rule 5-602(B)(2)(b), any defendant would be able to raise the issue of competency
12 and have the jury decide it even in the absence of the slightest bit of evidence that the
13 defendant was incompetent. Such a result would be contrary to our well-established
14 guidelines regarding the interpretation of Supreme Court rules.”). However, in the
15 absence of reasonable doubt, the district court need not submit the issue to the jury.
16 See *id.* ¶¶ 22–23, 25. As such, assertions as to the question of incompetency must be
17 properly substantiated to show reasonable doubt. See *Flores*, 2005-NMCA-135, ¶ 29
18 (“[A] court may consider defense counsel’s observations and opinions, but that those

EXH 13 4.5

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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Time	Speaker	Note
9:57:26 AM	CHANDLER	CLOSING ARGUMENT
10:10:27 AM	CHANDLER	CONTINUES CLOSING ARGUMENT
10:45:29 AM		CONTINUES CLOSING ARGUMENT
10:46:27 AM	COSBY	CLOSING ARGUMENT
10:58:56 AM		CONTINUES CLOSING ARGUMENT
11:30:00 AM	CHANDLER	BRIEF REBUTTAL
11:39:16 AM		CONTINUES BRIEF REBUTTAL
11:40:01 AM	COURT	READS INSTRUCTION 19 BEFORE DELIBERATION IS BEGUN
11:41:14 AM	COURT	ANNOUNCES ALTERNATES
11:42:36 AM		JURY EXCUSED TO BEGIN DELIBERATION AND ALTERNATES EXCUSED
11:43:09 AM	DFT	DFT WANTS TO SAY SOMETHING
11:44:05 AM	COURT	YOU CANNOT SAY ANYTHING
11:44:13 AM	OFF RECORD	
3:03:40 PM		JURY SEATED IN BOX
3:04:08 PM	COURT	READS THE VERDICT GUILTY COUNT 1 1ST DEGREE MURDER
3:04:45 PM		GUILTY COUNT 2 TAMPERING WITH EVIDENCE
3:04:58 PM		GUILTY COUNT 3 TAMPERING WITH EVIDENCE
3:05:14 PM	COURT	DFT WISHES TO HAVE THE JURY POLLED, JURY POLLED BY NUMBER
3:06:35 PM	COURT	READS FINAL INSTRUCTION TO JURY BEFORE EXCUSED
3:07:13 PM		JURY EXCUSED FROM SERVICE
3:07:51 PM	CHANDLER	STATES REQUESTS TO MOVE INTO SENTENCING
3:08:07 PM	COSBY	ASKS FOR A 60 DAY EVALUATION
3:08:21 PM	CHANDLER	THIS SENTENCE IS A LIFE PLUS SIX YEARS
3:09:02 PM	COURT	IT IS MANDATORY TO LIFE
3:09:15 PM	COSBY	HE HAS A RIGHT TO AN ALLUCION
3:09:40 PM	COURT	WE WILL SENTENCE AFTER PRESENTENCE REPORT
3:09:59 PM	COSBY	REQUESTING A 60 DAY EVALUATION
3:10:16 PM	COURT	ORDER THE PRE SENTENCE REPORT ,
3:10:31 PM	RECESS	

Exhibit 6
 Tried to Alert Court of
 Conflict of Interest Between
 Counsel and I and Anne
 Record. I was denied.

10/11/2013

3013

Page 28

Patient: 141541 - ALBERTO J. RAMIREZ
DOB: [REDACTED]
SSN: [REDACTED]

Page 2

Page
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Date: 04/17/2007 12:15
Provider: KIRAN SHARMA MD

Musculoskeletal system:

General/bilateral: ° Musculoskeletal system: normal

Knee:

General/bilateral: • Knees showed abnormalities ° No tenderness on palpation of the knee ° No pain was elicited by motion of the knee ° Knees demonstrated normal movement ° Knees demonstrated no muscle weakness

Right knee: • Examined

Left knee: • Examined

ASSESSMENT

Bilateral knee pains

PLAN

KIRAN SHARMA MD ordered

• Urinalysis and urine drug screen

• CBC

• A comprehensive metabolic panel

• Serum TSH level

• An X-ray of both knees

• Consultation with a physical therapist

* Refer to MHR for counselling and further evaluation

trying to call mom to find out more about pts mental health, unable to reach her

was
Injured

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/17/2007 14:36

EX-B. A 7.

Page
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Patient: 14154.1 - ALBERTO J. RAMIREZ

Page 2

DOB: [REDACTED]

SSN: [REDACTED]

Date: 04/24/2007 11:30

Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG:tid, Qty:21, Days:7, Refills:0

Lexapro 10 MG TABS, SIG:qd, Qty:30, Days:30, Refills:2

Refer to unum orthopaedics

pt has anger issues and is somatising

detailed discussion with brother about pts visits

otc knee brace, pt needs pshychiatric help

refer to MHR, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

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page

EXHIBIT 7

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EXHIBIT 7

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>3:06:50 PM</u>		AWARE OF BROTHER BEING PLACED IN FOSTERCARE
<u>3:07:31 PM</u>		GIVING STATEMENT TO DETECTIVE ON JULY 12TH THE DAY OF SHOOTING
<u>3:08:35 PM</u>		TOLD MEMBERS OF JURY NEVER SAW HIM ACT OUT, HE WOULD GET UPSET
<u>3:09:22 PM</u>		DOES NOT REMEMBER WHAT SHE TOLD DETECTIVE, NOW SHE REMEMBERS WHAT SHE TOLD DAVID LOERA
<u>3:11:35 PM</u>		CONTINUES TO REFER TO STATEMENT SHE MADE
<u>3:12:59 PM</u>		BENCH CONFERENCE
<u>3:13:50 PM</u>	CHANDLER	CONTINUES TO REFER TO HER STATEMENT
<u>3:14:33 PM</u>		GO BACK TO THE PHONE CALL, HE WAS MAD AT YOU THE DAY BEFORE THE SHOOTING, "WHAT IS WRONG WITH BEING MAD EVERYBODY GETS UPSET"
<u>3:15:09 PM</u>		I DID NOT KNOW HE WAS TRYING TO GET A GUN
<u>3:16:00 PM</u>		REFERS TO HER STATEMENT
<u>3:16:06 PM</u>	COSBY	PAGE AND LINE PLEASE
<u>3:16:20 PM</u>		NO I DID NOT KNOW, EVERYBODY KNEW NOT TO GIVE HIM A GUN
<u>3:16:55 PM</u>		TRAINING, EDUCATION AND EXPERIENCE
<u>3:17:05 PM</u>		YOU WANTED TO KNOW WHY HE DID THAT WHEN HE CALLED FROM JAIL, NOBODY WAS THERE WHEN IT HAPPENED
<u>3:18:13 PM</u>		YOU DO NOT KNOW WHAT HAPPENED AT 512 W. 6TH, "I WAS NOT THERE"
<u>3:19:18 PM</u>		YOU HAVE BEEN TALKING TO HIM EVERY NIGHT
<u>3:19:42 PM</u>		BENCH CONFERENCE
<u>3:20:41 PM</u>	COSBY	RDEX - ABOUT YOUR STATEMENT ABOUT WHAT YOU ARE SAYING YOU WERE TELLING YOUR BROTHER TO APOLOGIZE TO YOUR MAMA
<u>3:21:58 PM</u>		NOT SURE WHY HE WAS WEARING CRUTCHES
<u>3:22:30 PM</u>	CHANDLER	SPECULATION OBJECTION
<u>3:22:40 PM</u>	COSBY	RESPONSE ABOUT WHO GAVE HIM THE GUN "HE WAS HAVING ISSUES ABOUT HE THOUGHT SOMEBODY WAS AFTER HIM"
<u>3:24:25 PM</u>		SHE ALREADY KNEW ABOUT SHOOTING BECAUSE HER MOM CALLED HIM
<u>3:24:37 PM</u>		SHE BARELY TALKED TO ELADIO, NEVER CLAIMED HIM AS STEP FATHER
<u>3:24:59 PM</u>	CHANDLER	RXEX - YOUR CONCERN WAS ABOUT ALBERT'S STATE OF MIND
<u>3:25:49 PM</u>	COSBY	OBJECTION

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:36 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX. 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE CROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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EXIBIT 7

Exhibit 8

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its discretion in denying a mistrial.

D. Defendant was not prejudiced by the jury seeing his leg restraints

{39} Defendant's fourth issue is that he was prejudiced when the jury saw his leg restraints when he stumbled as he stood up at one point during the first day of trial. However, he concedes that he did not ask the court to make a finding of prejudice or declare a mistrial and asks this Court to review the possibility that the jury saw his leg restraints for fundamental error. The State argues that the factual record does not support Defendant's contention that the jury saw him shackled because all the parties agreed that the table skirt blocked the jury's view.

{40} "To preserve a question for review it must appear that a ruling or decision by the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not properly preserved, we consider the claim under the fundamental error exception to the preservation rule. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M. 513, 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant handcuffed for fundamental error because the defendant did not request a mistrial, did not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*, 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2) NMRA).

Exhibit 8

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for his expert's presence if sur-rebuttal was allowed. [Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent [See Supp. CD, 3:51:56 to 3:52:00], the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. [CD 10-10-13, 4:34:39 to 4:36:02] When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. [CD 10-10-13, 4:36:02 to 4:39:12] Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. [CD 10-10-13, 4:41:38 to 4:42:15]

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. [CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. [CD 10-11-13, 11:45:13 to 3:06:20]

EXHIBIT 9
NO DEFENSE
AT TRIAL

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE. <i>What is this means?</i>
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED.
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THERE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL. IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINK, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

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Exhibit 9

SEX ABUSE

2019

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Exhibit 9

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pack

II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland*'s two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

6

Exhibit 9

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Exhibit ↑

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That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about ~~how he had not been properly evaluated and represented,~~ the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial.

[See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

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EXHIBIT 9

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page

told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Shwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything...." Mr. Ramirez continued,

EXHIBIT 9

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EXB110

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1 observations and opinions alone cannot trigger reasonable doubt about the defendant's
2 competency.").

3 {25} Here, defense counsel merely stated his beliefs that Defendant was not capable
4 of assisting in his own defense and that Defendant did not have the capacity to
5 determine whether or not to testify. In response, throughout the trial, the judge did
6 everything within his power, under the rules, to address the Defendant's concerns with
7 his physical condition and his inability to understand the proceedings, allowing a
8 nurse to examine him during the trial and consistently explaining to the Defendant
9 what was happening. Accordingly, the district court did not abuse its discretion in
10 denying Defendant's request for a forensic evaluation during trial because relying
11 only upon his own observations, defense counsel failed to substantiate his assertions.

12 {26} Further, had the district court found reasonable doubt as to Defendant's
13 competency to stand trial, Defendant would not have been entitled to a competency
14 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
15 only recourse is to request a jury instruction on the issue of competency. *See* Rule 5-
16 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
17 on competency to the court or objecting to the instructions as offered. *See State v.*
18 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 ("Defendant did not

EXB110

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Exhibit 10

foretell testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. [RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]

ch page

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question

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Exhibit 10

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41 page

(citation omitted). “Generally, only an evidentiary hearing can provide a court with sufficient information to make an informed determination about the effectiveness of counsel.” *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 (“A record on appeal that provides a basis for remanding to the trial court for an evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims are heard on petition for writ of habeas corpus . . .”); *State v. Telles*, 1999-NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the “proper avenue of relief [from ineffective assistance of counsel] is a post-conviction proceeding that can develop a proper record”).

{32} Though the district court repeatedly observed that defense counsel was providing excellent representation to Defendant, the court did not hold an evidentiary hearing. Therefore, the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant’s ability to bring such a claim via habeas corpus proceedings.

C. The district court did not abuse its discretion denying a mistrial based on Deputy Loomis’ commentary on Defendant’s silence

{33} Defendant’s third issue is that the court erred in denying his motion for a mistrial based on an alleged improper comment about Defendant’s silence after he had

EXHIBIT 10

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION , IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE , THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

10/10/2013

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relates that “for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders...” and that “[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder.” Peter Tyrer, Ruger Mulder, et al, “Personality disorder: a new global perspective,” World Psychiatry, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/> .

The two cases, *Flores* and Mr. Ramirez’s, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez’s need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

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Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury "shall be instructed on the issue." In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel's assertion. "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required..." *Drope*, 420 U.S. 162, 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181.

Mr. Ramirez's case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

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Exhibit 10

c/d page

deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13,122 N.M. 246. "Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury." *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. [10-10-13 CD B 2:07:30-2:41:36]

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was "not fair" because he wasn't being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. [10-10-13 CD B 10:40:41-10:58:56] The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. [10-10-13 CD B 3:45:47-3:46:20]

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. "The issue of a defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings."

1 representation, motions he wanted filed, and other issues he indicated that he would
2 present in his appeal.

3 (29) Defendant then demanded to be the first defense witness so he could
4 communicate his defense. During his direct examination, Defendant refused to
5 answer many questions directly saying he wanted to "explain everything." Defendant
6 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
7 the Defendant and recess the trial. Later, after the parties rested, Defendant had
8 another outburst, complaining that he had a right to know what the jury instructions
9 would be so that he could file motions. The court told Defendant that he was being
10 well-represented and the instructions were fair.

11 (30) At Defendant's sentencing hearing, Defendant complained to the court that his
12 defense counsel had failed to effectively represent him and that he did not receive a
13 fair trial. Defendant argued that the jury would not have convicted him had it fully
14 understood that he was the victim. The district court assured Defendant that he had
15 received excellent representation and pronounced the sentence.

16 (31) "This Court has repeatedly stated that ineffective assistance of counsel claims
17 are best served through habeas corpus proceedings so that an evidentiary hearing can
18 take place on the record." *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949

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1 competency by Dr. Fink in January 2013, Defendant spoke directly to the court,
2 though he was represented by counsel, and asked for a fifth forensic evaluation to
3 determine his competency. Defendant argued that a new evaluation would show he
4 was suffering from “psychosomatic delusions and hallucinations and severe
5 depression and anxiety.” The judge listened to Defendant’s request and then denied
6 it.

7 {17} This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124
8 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported
9 declaration against competency made prior to trial rose to the level of reasonable
10 doubt. In that case, just before trial, the defendant’s counsel asked the court to find
11 that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant’s
12 counsel cited her own experience with the defendant as the basis of the request, stating
13 her belief that his condition had deteriorated because he had been held in isolation
14 since the competency hearing. *See id.* ¶ 8. The Court held that while “a court may
15 consider defense counsel’s observations and opinions . . . those observations and
16 opinions alone cannot trigger reasonable doubt about the defendant’s competency.”
17 *Id.* ¶ 29. The Court also concluded that the testimony of experts is not required to
18 support a contention of incompetency, but “[i]nstead, a defendant could offer an

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EXHIBIT 10

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1 offer an instruction on competence, nor did he object to the instructions given the jury.

2 Therefore, this issue was not properly preserved for appeal.”).

3 **B. Defendant did not receive ineffective assistance of counsel**

4 (27) Defendant’s second argument is that he was denied effective assistance of
5 counsel because defense counsel “lacked the necessary assistance of [Defendant]
6 himself”; failed to “seek the assistance of necessary experts,” and if more money was
7 required to seek such assistance on an urgent basis counsel should have requested it”
8 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
9 motions to determine competency, resulting in prejudice to Defendant. Counsel has
10 abandoned the claims that trial counsel failed to call other witnesses or made promises
11 to the Defendant because these claims are unsupported by the record. As such, we
12 decline to review these claims.

13 (28) One week prior to trial, the district court denied Defendant’s motion to appoint
14 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
15 counsel informed the court of his decision not to call a witness on the record, as it was
16 against Defendant’s wishes. Defendant then addressed the court, against counsel’s
17 advice, about how his defense had been limited, how his mental illnesses affected him,
18 the amount of media his case was receiving, the quality of his attorney’s

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interview witnesses and other persons.

Contact was made with the 911 caller, Grace Finkey, who witnessed the incident, recognized the shooter, and contacted law enforcement. The victim, Eladio Robledo Valdez was pronounced deceased while at PRMC. According to the mother of the suspect, Albert has a large blue car, containing all his personal belongings. The vehicle was broken down in front of 511 E. 6th Street. Officers responded to the residence and observed the silver blue Cadillac parked on the street in front of the duplex. The vehicle contains a large amount of clothing and other personal items, possibly belonging to Albert Ramirez. The duplex at 511 E. 6th Street is currently vacant. The front window, facing north is open and raised approximately 8". The front and back doors are locked. The window on the east side of the building is unlocked with the screen removed. There are handprints on the exterior of the glass indicating that the window was pushed up to open the window. There are two cinderblocks under the window to provide easy entry into the window. The suspect, Albert Ramirez may be hiding within the vacant duplex to avoid detection and apprehension by law enforcement. Based on this I believe that evidence relevant to the shooting may be within the residence or the vehicle described, and located at 511 E. 6th Street, Clovis, Curry County, New Mexico.

HEARDAY CANT JUST SEARCH CAUSE WHAT HE BELIEVES, NO MATTER IF HE'S A COP!!! might be good to try and get whatever evidence found with the

Affiant is a full-time salaried, sworn Law Enforcement Officer currently employed with the Clovis Police Department. Affiant's current assignment is Detective with the Special Operations Unit, and member of the Major Crimes Unit.

warrant!

SUBSCRIBED AND SWORN TO BEFORE ME IN THE ABOVE NAMED COUNTY OF THE STATE OF NEW MEXICO,

THIS 12 DAY OF July, 2007.

Robert S. Oniz
JUDGE

Robert S. Oniz
TITLE

Robert S. Oniz
AFFIANT

Detective #98
TITLE

APPROVED BY ASSISTANT DISTRICT ATTORNEY

Matth Chanell

ON July 12, 2007

EXIBIT 11,

EXIBIT 11

EXHIBIT (11)

page 8

Wrote
over you
thru

EXHIBIT 11

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

**STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT**

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,

D.O.B. [REDACTED]

SSN [REDACTED]

Deanna Hunt
CLERK DISTRICT COURT

D-0905- SW 0200 7 00 001

and a silver blue Cadillac 4-door bearing Texas license W55HHS

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being dully aworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, atenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED] Social Security Number [REDACTED], Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

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NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

RETURN AND INVENTORY

STATE OF NEW MEXICO

-VS-

2007 JUL 13 PM 3: 30

Albert Ramirez,

D.O.B. [REDACTED]

SSN: [REDACTED]

D-0905

Subpoena
CLERK DISTRICT COURT

and a silver blue Cadillac 4-door bearing Texas license W55HHS

I received the attached Search Warrant on 07/12/07 And executed it on 07/12/07
at 2235 Hours. I searched the person or premises described in the Warrant and left a copy of the Warrant with:

None present at scene

(name of the person searched or owner at the place of search)

Together with a copy of the inventory for the items seizes. The following is an inventory of the property taken pursuant to the Warrant:

- 1 photo of suspect and unknown black male (Gang Writings)
- 1 paper with writing about shooting people
- 1 letter to Albert Ramirez denying his SSI benefits

This inventory was made in the presence of

Ricky M. Smith
Applicant for Search Warrant

and

Randy Pitcock
Owner or other witness


Signature of Officer or Detective


Signature of Owner or Witness

Return made this _____ day of _____, 2007 at _____ hours.

(Judge Clerk)

After a careful search, I could not find at the place, or on the person described, the property described in this Warrant.

(Officer)

(Date)

EXHIBIT (11)

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	GOSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION.
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT.
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL.
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

10/10/2013

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JUNE 13, 2014

Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fornoff
CMI Projects Editor
rfornoff@cnjonline.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Eladio Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 18, waited outside the home the morning of July 12, 2007, with a loaded .22 caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head execution style.

Chandler called the killing "premeditated...calculated...and cold-blooded." He noted a pre-sentence report branded Ramirez a malingerer who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good kid," Israel Ramirez told Hartley. "If I could switch places with him I would."



CNJ staff photo: Robin Fornoff
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Eladio Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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JUNE 13, 2014

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson: Freedom Newspapers

A tip from a citizen led to the arrest of a Clovis teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W. 13th St. around 8:30 a.m. Sunday morning, a press release from Clovis police said.

He is accused of shooting Eladio Rubledo, 39, multiple times in the front yard of 512 W. 6th St., a residence Rubledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Curry County Adult Detention Center on \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Rubledo laying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Rubledo with his hands outstretched toward the victim as if he was holding a gun and then two more shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Rubledo, who was bleeding from the head and unresponsive, the affidavit said.

Rubledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Rubledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Networks program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

Calls to Debra Ramirez seeking comment were not returned Monday.

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HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS JUST TV SECTIONS AUTOFINDER

JUNE 13, 2014

Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnson: CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Terdy Hartley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disturbed young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and talked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez' mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Debra Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez' criminal case had been put on hold pending the outcome of the evaluations.

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HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS JUST TV SECTIONS AUTO/INUR

JUN 13, 2011

Accused killer takes witness stand

October 10, 2013

By Robin Fornoff

CMI PROJECTS EDITOR

rforoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on west Sixth Street for work.



Albert Ramirez
On trial for murder

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.

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JUNE 01, 2014

Teen charged with murder has competency issues

July 16, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Sharna Johnson: CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan

☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

- I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
- I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
- I understand that there are limitations to treatment.
- I understand that there are potential adverse outcomes to treatment.
- I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
- I understand that my treatment sessions will address my treatment goals.
- I will complete assigned treatment homework (if any is assigned by my clinician).
- Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)#69592 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature DateBeatrice Narcisco, PhD, LPCC
Clinician (Printed/Typed Name)B. Narcisco, PhD, LPCC 8/30/16
Clinician Signature DateEileen R. Missall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)[Signature] 8/30/16
Reviewer Signature DateInmate Name: Ramirez, AlbertoNMCD#: 69597Facility: CNMCF/MHTC

Treatment Plan

Form CD-180108.1 (Rev. 06/16/14)

could manage

1) 3 choices Better Same or Worse

2 Take control one person 24/7 myself.

3) (RESPONSIBILITY)

Ability to respond rather than react.

SELF-ESTEEM
COPE

10-15 emotionally stopped during
training slips from progress.

Mental illness is no excuse if bad behavior

I'm Sorry I take responsibility

in learning my ability to respond.

Thinking about was very inappropriate
one goal to control one behavioral

I don't think impulsivity.

twice for the same. I should be changed

I didn't mean it in an inappropriate way

very impulsive way.

that's what I'm working

ON in therapy.

~~3 COPIES OF EACH
PAGE OF THESE~~

End of
pages

☐
CNMCF/CMRU/CMU
P.O. Drawer 1328
Los Lunas, NM 87031☐
GCCF
P.O. Box 520
Santa Rosa, NM 88435☐
LCCF
6900 W. Millen Dr.
Hobbs, NM 88244☐
PNM
P.O. Box 1059
Santa Fe, NM 87504☐
SNMCF
P.O. Box 639
Las Cruces, NM 88004☐
SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004☐
WNMCF
P.O. Drawer 250
Grants, NM 87020☐
NENMDF
185 Doctor Michael Jenkins Rd
Clayton, NM 88415

Name _____
No. _____ Unit _____

START

Date: _____

All these ARE
PART OF old petition that
WAS denied and NO
lawyer to assist denied.

start labeled
TO END
ABCDE

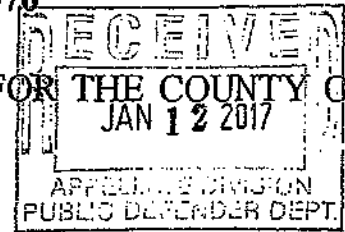
COPIES OF
my other FLOPPIES 3.22.17
4.25.17
LOST BY PRISON
OFFICIALS

Steven Froberg

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was defendant, the district court entered judgment convicting defendant of willful and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this Court upon notice of appeal and statement of issues filed by defendant, whereupon such proceedings were had that on December 1, 2016, a decision was issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

(A)

A true copy was served on all parties
or their counsel of record on date
filed.

Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

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P.O. Drawer 1328
Los Lunas, NM 87031

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Santa Rosa, NM 88435

LCCF
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Hobbs, NM 88244

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P.O. Box 1059
Santa Fe, NM 87504

SNMCF
P.O. Box 639
Las Cruces, NM 88004

SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004

WNMCF
P.O. Drawer 250
Grants, NM 87020

NENMDF
185 Doctor Michael Jenkins Dr.
Clayton, NM 88415

Name _____
No. _____ Unit _____

Exhibits Counsel
NAME IS MR COSBY

HABEAS PACKET Date: _____

QUESTION # 3 AND 4 IN THIS WAS INTERVIEW COMPACT

COUNSEL AT TRIAL VERBALLY ASSAULTED I MR RAMIREZ STATING I AM A STUPID LITTLE BITCH AND I GET BACK AND PROMISED TO BE INEFFECTIVE IF I MR RAMIREZ CONTINUED TO INSIST ON GOING TO TRIAL RATHER THAN PLED GUILTY AS COUNSEL INSISTED.

AND THREATENED MR RAMIREZ BY SAYING I HOPE YOU GET LIFE. COUNSEL WOULD NOT COMMUNICATE WITH I MR RAMIREZ AS I TRIED TO NO AVAIL.

COUNSEL WOULD NOT FILE MOTIONS FOR CHANGE OF VENUE EVEN THOUGH THERE WAS EXTENSIVE EVIDENCE THAT WAS INCOMMISSIBLE, SAYING MR RAMIREZ THREATENED TO KILL HIS MOTHER AND STEP FATHER AND HIS MOTHER KICKED HIM OUT DUE TO HIS VIOLENT TENDENCIES.

COUNSEL WOULD NOT SUPPRESS EVIDENCE THAT I WAS HIDING IN CAR AND THEY FOUND RAP WORDS TALKING OF SHOOTING PEOPLE.

MR COSBY WOULD NOT CALL DR. MARJORIE SWARTZ TO TESTIFY FOR THE DEFENSE OF INABILITY TO PERFORM SPECIFIC INSTANT DUE TO MENTAL ILLNESS. SEVERE DEPRESSION ANXIETY, SCHIZOPHRENIC PERSONALITY AND MY COMPETENCY TO STAND TRIAL.

I WANTED TO HAVE JURY INSTRUCTION ON THE ISSUE OF COMPETENCY RULE. JUDGE (22/23) AND REFUSED TO OBJECT TO INSTRUCTIONS I ASKED HIM TO.

I ALSO TOLD COUNSEL I DID FALL DOWN WHEN SHERIFF CALLED ME TO WALK TO HIM AND I WAS COERCED INTO SAYING NO BY SHERIFF DOCKETY AND GUSTERED BEHIND MY LAWYERS BACK TO SAY NO I ASKED HIM TO REQUEST A MISTRIAL TO NO AVAIL.

THE JURY SEEN ME SHOCKED I TOLD MY LAWYER TO REQUEST A MISTRIAL SHERIFF DOCKETY TOLD ME TO SAY I DID NOT FALL AND I IS TO HELP THE STATE.

(B)

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LOCF
6900 W. Millen Dr.
Hobbs, NM 88244

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Santa Fe, NM 87504

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P.O. Box 639
Las Cruces, NM 88004

SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004

WNMCF
P.O. Drawer 250
Grants, NM 87020

NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

Counsel

MR COSBY REFUSED to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

Also witness Priscilla Lopez and Ricky Jaramillo eye witnesses would of testified that I am Real Skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call Dr. Funk as a witness at trial as I asked. Dr. Funk would of testified that I was not competent and mentally ill

I asked counsel to call Dr. Joane Burness to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness + intoxication history and drugs.

I did express dissatisfaction with counsel and the court failed to inquire into the matter.

Counsel
MR COSBY promised if I testified I would be able to speak of sexual abuse by Niebor and my moms boyfriend He lied to incriminate me.

If counsel did not lie I would not have testified and trial may have been different together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I wouldn't take plea.

(C)

☐
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Grants, NM 87020☐
NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

COUNSEL did not call IS/CAI nor did who would of testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime he tried to go see me.

COUNSEL failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, but the court refused to let me say anything about conflict between I and counsel.

I tried to put in record what trial counsel said after I tried to fire him.

Court refused to inquire into it if the court had I'd of got a new attorney or a mistrial I asked to represent myself.

I was denied my Sixth Amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record.

Thanks very much.

①

☐
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NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

ineffective assistance of appellate counsel
Saying in my appeal I abandoned to
show counsel at trial was ineffective it
shows on record I asked to call
Dr. Maxine Swartz and was denied,
maybe I would of gotten an
evidentiary hearing on appeal
also heard not argue I did not receive
a fair sentencing and double jeopardy
on tampering with evidence.

I ask for an evidentiary hearing.

^{extra} To show the true facts, not able
to write all the facts.
there is alot more.

I want to make a proper
record.

(T)

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12: 21


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

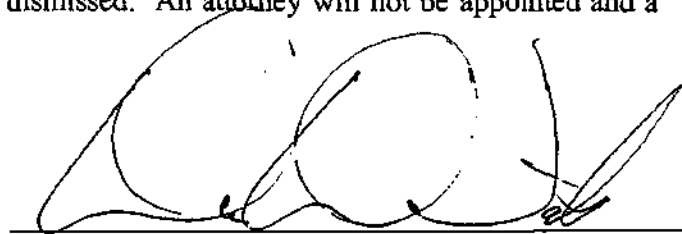
A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.

A handwritten signature in black ink, appearing to read 'Drew D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
District Judge, Division II

12-501

ORIGINAL

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

S-1-SC-36599

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT FROM
DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO RANKEZ

Defendant-Petitioner,

S.Ct. No.

D-90S-CR-7027
000429

SUPREME COURT OF NEW MEXICO (leave blank; court will assign) SUPREME COURT OF NEW MEXICO
RECEIVED FILED

vs.

JUN 27 2017

JUN 27 2017

WILSON FRANKO

District Ct. No.

(Name of Warden)

Respondent.

EXHIBIT

S

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICOABER RAMIREZ

Defendant

Petitioner pro se

(address information)

P.O. Box 1059 SANTA FE, NM 87504PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ABER RAMIREZWILLIAM J. GUNMAN PRISONJUL 2nd 2017(your name v. Warden's name), District Court No. _____ filed on _____D-090522-2007-00134

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

NOT INQUIRING INTO REASON AS TO
WHY INMATE ABER RAMIREZ FIRED HIS
ATTORNEY IN MIDDLE OF TRIAL AND
ASK TO REPRESENT HIMSELF.WHY NOT ALSO IF THE COURT
ERRED IN NOT GRANTING

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

ASSISTANCE OF COUNSEL FROM
 PUBLIC DEFENDER POST CONVICTION
 OFFICE TO ASSIST IN HABEAS
 PROCEEDING AND WHY NOT GRANT
 THE SUPREMACY HEARING TO DETERMINE
 IF ALLEGATIONS ARE TRUE AND IF MR. [NAME]
 DESERVES A NEW TRIAL WITH NEW
 COUNSEL.

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

Homicide 1st degree murder 1 life
 21 tampering with evidence 2 yrs
 each 3rd degree.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

d-0908-CR-2007-00454

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

3. Tell the story of what happened in your court case:

Got into an ARGUMENT and Fought
 and my moms boy friend died
 I WAS high on MARIJUANA, mentally
 ill, drunk on Alcohol, and my trial
 lawyer told me not to say I was drunk
 I WAS ALSO told I was a little bitch and
 threatened by counsel to not help me
 Because I'd not take plea as he wanted He
 WAS not in my best interest He did not
 want to go to trial. I did It was not
 premeditated

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

Ineffective Assistance at trial and

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702.

ON APPEAL / SIXTH ADMONITION VIOLATION
 BUT THAT FOR COUNSEL'S UNPROFESSIONAL
 ERRORS, THE RESULT OF THE PROCEEDINGS
 WOULD HAVE BEEN DIFFERENT. CONFLICT OF
 INTEREST IRRECONCILABLE, BEFORE TRIAL
 AND AFTER = FIGHT HIM IN COURT

POINT 2:

COUNSEL TOLD ME I WAS A STUPID
 LITTLE BITCH, AND IF I KEEP INSISTING TO
 GO TO TRIAL HE WOULD NOT PROVIDE
 EFFECTIVE ASSISTANCE. TO EITHER PLEAD
 GUILTY OR GO TO TRIAL WITH
 INEFFECTIVE ASSISTANCE. CASE.

CHARLES GUYON v. UNITED STATES CIR
 95-18 F3d, 778, 9M CIR 1994

POINT 3:

DATE ~~BE~~ SHELL VS LARRY WILKES WARRIOR
 BILL LOCKER CIR 218 F3d, 1017 9M CIR 201
 LOUISON V. ~~REDA~~ MINISTERS CIR 95-761, F2d 275
 1985)

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

Appellate counsel ineffective Failing
to argue to Secretary and I asked
lawyer in record to call all native
Shawts and she was NOT called and refusal
to call witnesses. Extra info on other sheets
(Attach additional sheets, if necessary.)
She would be testified I was sexually abused
by victim Raulo. REQUEST FOR RELIEF capacity insanity always

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) TO grant assistance of post conviction
public defender assistance

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

I am trying to do my best

my husband ON
March 24th 2017
was lost by
prison OFFICERS
moved to me to
NW with seg not
my fault
documents lost

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 27 day of June 2017

Defendant-Petitioner, pro se

Credits

[Adopted effective Dec. 31, 2014.]

NMRA, Form 9-702, NM R CR Form 9-702

State court rules are current with amendments received through July 1, 2015.

End of Document

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I received dismissal
of petition June 5th 2017
its timely sent

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS..., NM R CR Form 9-704

S-1-SC-36599

Exhibits

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-704

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER
RULE 5-802 NMRA

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

9th

JUDICIAL DISTRICT COURT

Arzeto Ramirez

No.

SUPREME COURT OF NEW MEXICO
FILED

JUN 27 2017

[Signature]

Petitioner,

v.

Wooden German Franco

Respondent.

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS..., NM R CR Form 9-704

ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER RULE 5-802 NMRA

This matter having come before the court, and the court being fully advised of the circumstances;

THE COURT FINDS THAT:

[W] the petitioner is incarcerated; or

[W] the petitioner is not incarcerated, and is indigent and unable to obtain counsel; and

[W] This is a proceeding which a reasonable person would bring at that person's own expense.'

IT IS THEREFORE ORDERED THAT:

[W] the Public Defender Department is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

[W] the Public Defender Department, shall appoint an attorney on contract with the department represent the petitioner based on the conflict memorandum reviewed by the court or as disclosed at a status conference with the court.

[W] petitioner's counsel shall file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.

(
District Judge
)

USE NOTE

If the Public Defender Department is appointed, the clerk of the district court shall mail a copy of this order and a copy of the pro se petition to the Post-Conviction/Habeas Division, Office of the Public Defender, 505 Marquette NW, Ste. 120, Albuquerque, NM 87102.

Credits

[Adopted effective Dec. 31, 2014.]

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS..., NM R CR Form 9-704

Footnotes

1

Under the Indigent Defense Act, a person has the limited right to appointed counsel representation in post-conviction matters "unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense" NMSA 1978, § 31-16-3(B)(3) (1968). Therefore, the Public Defender may not be able to represent a petition in all cases.

NMRA, Form 9-704, NM R CR Form 9-704

State court rules are current with amendments received through July 1, 2015.

End of Document

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FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

NMRA, Form 9-705

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

9th JUDICIAL DISTRICT COURT

ABEID DAWUD

No. D-0905-CC 2007-000134

Petitioner,

v.

WALTER GOMEZ FERRERO

Respondent.

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

PROCEDURAL ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

This matter having come before the court on petitioner's petition for a writ of habeas corpus or other pleading pursuant to Rule 5-802 NMRA of the Rules of Criminal Procedure for the District Courts, the court having reviewed the record and being otherwise fully advised in the premises, FINDS AND ORDERS THAT:

1. SUMMARY DISMISSAL/TRANSFER OF VENUE¹

[W] This matter is transferred because of improper venue to the _____ Judicial District Court.

[W] This matter is summarily dismissed because as a matter of law petitioner is not entitled to relief based on a review of the files, pleadings, and records which show that: *(statement of reasons required)*

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

2. RETURN OF PETITION FOR FURTHER INFORMATION:

[W] The petition is returned to petitioner for additional information on the following issues/claims:

Pursuant to Rule 5-802(G) NMRA, a revised petition shall be filed within forty-five (45) days after service of this order.

3. FREE PROCESS AND APPOINTMENT OF COUNSEL:

[W] Petitioner is granted permission to proceed *in forma pauperis* based on Form 9-403 NMRA or because petitioner is an inmate of a correctional facility.

[W] Petitioner is not granted permission to proceed *in forma pauperis*.

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

[W] The Public Defender Department is appointed to represent petitioner based on the court's finding that this is a proceeding which a reasonable person would bring at that person's own expense. Upon being properly appointed, the Public Defender Department shall either file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of this appointment.²

4. RESPONSE:³

[W] The respondent is directed to file a response within one-hundred and twenty (120) days after the service of an amended petition or a notice that no amended petition will be filed.

[W] The court, having received an amended petition or a notice that no amended petition will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby summarily dismisses the petition. (*statement of reasons required*)

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FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

[W] The court, having received an amended petition or a notice that no amended petitioner will be filed, and based upon a review of the files, pleadings, and records, including the amended petition, hereby dismisses the following claims:

(statement of reasons required)

AND

orders a response from respondent on the following claims:

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

5. HEARING SCHEDULE:

[W] A status conference will be held on _____ (date), at _____ (time).

[W] A preliminary disposition hearing will be held on _____ (date), at _____ (time).

[W] An evidentiary hearing will be held on _____ (date), at _____ (time).

[W] An evidentiary hearing is not required, but legal argument will be heard on this matter on _____ (date), at _____ (time).

(
District Judge
)

USE NOTE

Credits

[Adopted effective Dec. 31, 2014.]

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

Footnotes

1

Paragraph 1 should only be used prior to the appointment of counsel and before the filing of any amended petition.

2

See NMSA 1978, § 31-16-3(B)(3) (1968).

3

After receiving the amended petition or notice that no amended petition will be filed, the court will then decide if a response will be ordered, and whether a status conference, a preliminary disposition hearing, or evidentiary hearing are required, and will send the parties notice. Paragraph 5 should be used when ordering a response at the time of appointment of counsel or after reviewing the amended petition or notice that no amended petition will be filed.

NMRA, Form 9-705, NM R CR Form 9-705

State court rules are current with amendments received through July 1, 2015.

End of Document

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DENT CLERK

Page: _____

THESE PAGES ARE part
 OF the NEW HABEAS
 Petition facts to try
 get a NEW decision
 based on additional facts
 please CLERK it ME
 KNOW IF I did NOT
 MAIL all PAPERS. IN Form
 G-701. and. please respond

NEW
 motions
 additional facts

1-12

7.
DEAR COURT Clerk, And
Judge Clerk Tatum, IVE
Filed motions I don't
know what is correct to
decide on new petition on
submission of new additional
facts. I need a response
immediately. I only have 1
one week to file cert petition
I request assistance of counsel
on post conviction please or thank

PLEASE respond ASAP I
only have 7 days. TO know
if you will grant my motion
my Request. God Bless.

Albert
Ramirez

Keep in order

DEAR. CLERK. THE LIBRARY
 OFFICER WHO MADE COPIES
~~HE~~ HE THREW AWAY
 LOTS OF IMPORTANT EXHIBITS.
 FACTS I WROTE. I HAD NO
 TIME TO ADD. ITS 9 MISSING
 PAGES. ALSO CLERK, PAPERS WERE
 MISSING TO THE O.A. NINTH JUDICIAL
 AND TO WERNER GERMAN FRANKS ^{district court}
 BECAUSE LIBRARY OFFICER CLERK DID NOT MOVE THE
 COPIES I ASKED FOR. MISSING WAS. PAGES 9
 OUT OF. FORM 9-704. N.M. R.C.R. FORM 9-704
 AND. FORM 9-705. N.M. R.C.R. FORM 9-705
 FOR THE FORM 12-18 AND 18 + ³³ PAGES. I AM SORRY.
 ITS NOT MY FAULT. ITS THE PRISON STAFF.
 I WILL SEND THEM ASAP. I APPRECIATE
 YOUR TIME. + HELP GOD BLESS YOU ALL
 I AM VERY GRATEFUL
 THANKS
 AIBELT
 RAMIREZ

DEAR COURT CLERK
I AM Alberto Ramirez
I asked the prison law
library to make copies He

lost a PAPERS OF MINE .
and did not make copies of
everything I told him to do

THE Habeas packet Form 9-701
petition for writ of Habeas
corpus, N.M.R. CR. Form 9-701
wastis. New Mexico statutes annotated
7. CRIMINAL FORMS.
Article 7. SPECIAL PROCEEDINGS

TO: COURT CLERK, JUDGE drew tatum
d.A., WARDEN FRANCO, ATT. GENERAL
SUPREME COURT, FED. COURT. ALL WHOM CONCERN

I DID NOT do NOT know how to properly
present facts to court in petition. I
Requested AN ATTORNEY FOR post conviction
to HELP ME. I ASK TO PLEASE consider
I am pro se I am NO lawyer. I ONLY
HAVE 4th grade Education level. ALSO my
Hobart's I sent. 3.22.17 / 4.25.17 were
dismissed, my copies were lost by prison
OFFICIALS, WHEN I was placed INTO Probation
Custody. 5.31.17. I BECAME aware of lost
Hobart's on. 6.1.17 when released to
another unit. IN prison. PLEASE SEND
ME COPIES COURT CLERK, JUDGE, DA.
Public Affairs Office, I have to send
COPIES OF it WITH cert petition to Santa Fe
SUPREME COURT. I am SO SCARED I
NEED HELP. MERCY all the kindness I can
GET. PLEASE Respond ASAP

I ONLY have like 7 days left
to SEND all PAPERS. HELP ME

Judge drew tatum.
TO: and court clerk.

PLEASE SEND ME A
RESPONSE ASAP. FOR
the motions + ^{REVISE} petition
+ Reconsideration

^{RESUBMIT}
^{PETITION} / Amend PETITION / I ONLY
HAVE like ONE week to
File Certiorari petition with
Supreme Court. I NEED A
RESPONSE IMMEDIATELY PLEASE

I am ASKING FOR HELP.

I am PRO SE, I HAVE

NO ASSISTANCE I
AM LOST + What to do.
I am INNOCENT.

Motion to Resubmit
PETITION AND decide
based on additional
facts and in light of
Submission of New Facts.
TO properly present claim
OF INEFFECTIVE ASSISTANCE
OF COUNSEL "at TRIAL"
AND ON APPEAL.

Thank you very much

Motion to Amend
and to PETITION AND TO decide
PRESENT or Submit
new additional facts
NOT KNOWN. I did
NOT know how to
PROVE MY CLAIM OF
INEFFECTIVE ASSISTANCE
OF COUNSEL.
I DON'T KNOW how to ask
COURT TO decide petition
ON additional facts
I AM INNOCENT

Motion to Amend petition
BASED ON new facts, IN
LIGHT OF submission of
additional facts. I did
NOT know how to properly
present claim.
PLEASE AND Thank you

Motion To Reconsider
THE decision BASED ON
NEW, 2nd IN light
OF SUBMISSION OF
ADDITIONAL FACTS. TO
PROPERLY PRESENT CLAIM OF
INEFFECTIVE ASSISTANCE
OF COUNSEL AT TRIAL +
APPELLATE COUNSEL.

BASED ON NEW
PETITION.

PLEASE THANK YOU

Motion to Revise ~~and decide~~
NEW Petition, TO Submit
IN light OF NEW facts
and ADDITIONAL ^{Submission} Facts.

INFORMATION, I did
NOT KNOW How to present
FACTS to PROVE CLAIM
ON INEFFECTIVE ASSISTANCE
OF TRIAL + APPRIATE COUNSEL.

I AM INNOCENT.

Motion to REVISE petition
and in light OF Submission
OF NEW additional FACTS
TO support and properly
present claim OF INEFFECT
ASSISTANCE OF COUNSEL.

Thank you

- MOTION -

PETITION FOR DISCRETIONARY
REVIEW BEFORE THE HIGHEST
STATE COURT.

I'VE ASKED LAW LIBRARY
IN THE PRISON PNM SOUTH
PENITENTIARY OF NEW MEXICO
I'VE ASKED OTHER INMATES.
NO ONE KNOWS WHAT IS
A PETITION FOR DISCRETIONARY
REVIEW ~~IS IT~~

PETITION FOR DISCRETIONARY
REVIEW.

TO THE COURTS and all people who want
to know why I am trying to get an
attorney to assist, To get my habeas granted,
I am physically crippled, mentally ill, schizophrenic,
PTSD, and from sex abuse, self abuse, and
I had doctors, family members, myself who
would say I was sexually abused on record, the
court said no, COSBY failed to do his job
I was seen shaking and fall by JURY it was
the COURT failed and Sheriff doctery and
ME and told me to say I did not fall verbally.
CHANDLER had said no, and COSBY said it was
seen him fall, HARTLEY gave me fall he denied it,
and asked did you fall, I said yes, then seen
SHERIFF doctery looking mean gesturing no, and
CHANDLER heard once finger no and making no,
me, to deny my mistress and let her manipulate
to speak on record before trial ended, IT
was double jeopardy. The government lied, did
something to benefit the government themselves
I should be free at charges dismissed, and
at very least a new trial, this is wrong
in justice all over, I thought court people
are Christians told the truth and the cops obeyed
the law, they got away with sending innocent people
to prison. No fair trial nothing right
GO TO PAGE TWO
with ~~the~~

I NEED SOMEONE- IN THE JUSTICE PROCESS
TO HELP ME. I don't deserve to be wrongfully
convicted, I AM A victim OF A corrupted,
Coil System OF LIARS and cheaters, the detective
mistake witness investigations, to try to get
A first degree conviction, The LAS. Vegas, hospital
don't give me a PROPER EXAM BECAUSE I WAS
assaulted by employer and I was given SUC LUBA
dr. Bussess lied / I do have facts documents to
show detectives mistaken witness, its just to me
papers to show I told cosby that and he never
listened or advised me in person, only says what
he wants on Record to cover his Butt, Thats
why none of them let me speak on Record
THESE NO JUSTICE FOR MR. RANIERZ
what IF I have showed to the court
An alleged social IS TRUE. NOBODY CARES
I am one of the many humans IN
Prison wrongfully convicted, Injustice,
I just wrote MR to let the people
IN the courts to know.
I wish you All everyone all
The Best and you Family
God will Bless you All,
THANK YOU

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN GERMAN FRANK

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. ALBERT RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PNM Penitentiary of New Mexico (name of facility and county of detention) by WARDEN JAMES FRENCO (name and title of person having custody).

2. This petition

☒ [W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ [W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL
AND APPEAL COUNSEL ON APPEAL →

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I TRIED TO SPEAK
TO COUNSEL I TO NO
AFTER INTERVIEW
COUNSEL

COUNSEL MR. COSBY. BEFORE TRIAL BEGINS AND AFTER I
TRIED TO FIRE HIM IN FRONT OF JURY did VERBALLY
ASSAULT AND make threats stated, STUPID LIKE BITCH
I promise to be ineffective ASSISTANCE if you keep do
saying you want to GO TO TRIAL AS IF I INSIST
I HOPE
YOU GET
LIFE

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

(I don't know what this means. SIE)

IT TRY? IT IS A CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE AT TRIAL + ON APPEAL

I WROTE ON Extra sheets of papers to
EXPLAIN SOME FACTS BEST AS I CAN
+ EXHIBITS - EVIDENCE
ALLEGATIONS

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES, I WAS TOLD APPEAL WAS DENIED TO FILE
A HABEAS PACKET. NOW HERE IS THE
HABEAS.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

I RAISED THIS ISSUE IN FIRST HABEAS.
NOW THIS ONE IS TO ~~RE~~ RESUBMIT IT
AND FIX IT.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

TO BE APPOINTED ASSISTANCE FOR
PUBLIC DEFENDER POST CONVICTION DIVISION
TO ASSIST ME TO GET AN EVIDENTIARY
HEARING TO PROVE THE ALLEGATIONS ARE TRUE

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

D-0905-CR-2007-00434 I'M NOT
SURE

(b) docket number:

D-0905-CR-2007-00434 DON'T
KNOW

(c) name of judge:

Teddy L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700 N. MAIN ST
9th JUDICIAL DISTRICT COURT

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligibility after 30 yrs plus two 3 yrs
two tampering with evidence,
1st degree murder
2 tampering with evidence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE, P. COSBY

P.O. Box 3330

14. Did you appeal your conviction?

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court.

New Mexico Supreme Court of Appeals.

(b) The case name and docket number for each appeal:

(DONT KNOW How to do this.)

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed Sometime Around August 2013.

Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

Competency Reevaluation, Ineffective assistance
of counsel, improper comments on silence, prosecutor
misconduct, prior bad acts.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG

505. Marquette N.W. 87102

505. 796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding: petition Habeas, denied, But I've put new motion to
Recon's. etc, answer, revised petition
decision

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

petition Habeas, But this one is to
Resubmit it to try to do it properly

(b) The name and date of each case:

Am Judicial District Court, State of N.M. v. ABST
RANIER

(c) the docket number:

NOD-0905-CR-2007-00434

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

NA

(e) the result of each proceeding. (Attach a copy of each decision.)

denied,

(f) The issues raised in each proceeding:

ineffective assistance of counsel,

(g) State whether a hearing was held in connection with each of these proceedings:

no

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

NO

19. Do you seek the appointment of counsel to represent you?

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, ____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

am
Jung
Court (name of court)
Clovis
87501
(city), New Mexico, (zip code).

(
Signature
)

AIBERT JOSE RUMIREZ

(
Address
)

P.O. BOX 1059 SANTA FE 87501

PNM No., if applicable

NOTARIZE PLEASE

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

SUBSCRIBED AND SWORN TO before me this 12 day of JUNE 2017 by

(Name of petitioner)

ALBERTO RANTIEREZ

Notary Public

My Commission Expires:

4/23/2019

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MAIL (describe manner of service), this 13 day of JUNE, 2017

(Signature of petitioner)

ALBERTO RANTIEREZ

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

¹ After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

² Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

NMRA, Form 9-701, NM R CR Form 9-701
State court rules are current with amendments received through July 1, 2015.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

End of Document

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☐ PNM
P.O. Box 1059
Santa Fe, NM 87504

☐ SNMCF
P.O. Box 639
Las Cruces, NM 88004

☐ SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004

☐ WNMCF
P.O. Drawer 250
Grants, NM 87020

☐ NENMDF
185 Doctor Michael Jenkins Rd
Clayton, NM 88415

Start

Date: _____

Name _____
No. _____ Unit _____

All these pages are
part of old petition that
was denied and no
lawyer to assist denied

Start to
2nd labeled
A.B.C.D.E

COPIES OF

my other. HABEAS'S

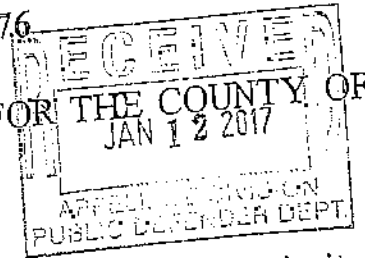
were lost by prison
OFFICIALS

222.17
475.17

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was defendant, the district court entered judgment convicting defendant of willful and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this Court upon notice of appeal and statement of issues filed by defendant, whereupon such proceedings were had that on December 1, 2016, a decision was issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

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Santa Fe, NM 87504

SNMCF
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Las Cruces, NM 88004

SNMCF-POU
P.O. Box 20805
Las Cruces, NM 88004

WNMCF
P.O. Drawer 250
Grants, NM 87020

NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____
No. _____ Unit _____

Exhibits Counsel
NISE COSBY
MR COSBY

HABEAS PACKET Date: _____

QUESTION # 3 AND 4 IN THIS WAS INTERVIEW CONDUCTED
COUNSEL AT TRIAL VERBALLY ASSAULTED ME MR RAMIREZ
STATING I AM A STUPID LITTLE BITCH AND LET BACK AND
PROMISED TO BE INEFFECTIVE IF I MR RAMIREZ
CONTINUED TO INSIST ON GOING TO TRIAL RATHER
THAN ~~PLEA~~ PLEAD GUILTY AS COUNSEL INSISTED.
AND THREATENED ME RAMIREZ BY SAYING I HOPE
YOU GET LIFE. COUNSEL WOULD NOT COMMUNICATE
WITH I MR RAMIREZ AS I TRIED TO NO AVAIL.

COUNSEL WOULD NOT FILE MOTIONS FOR CHANGE OF
VENUE EVEN THOUGH THERE WAS EXTENSIVE EVIDENCE
THAT WAS INCOMMISSIBLE, SAYING MR RAMIREZ
THREATENED TO KILL HIS MOTHER AND STEP FATHER
AND HIS MOTHER KILLED HIM OUT DUE TO
HIS VIOLENT TENDENCIES.

COUNSEL WOULD NOT SUPPORT EVIDENCE THAT I WAS
HIDING IN CAR AND THEY FOUND RAP WORDS TALKING
OF SHOOTING PEOPLE.

MR COSBY WOULD NOT CALL DR. MARJORIE SWARTZ TO
TESTIFY FOR THE DEFENSE OF INABILITY TO PERFORM
SPECIFIC TASK DUE TO MENTAL ILLNESS. SEVERE DEPRESSION
ANXIETY, SCHIZOPHRENIA PARANOIA, AND MY COMPETENCY
TO STAND TRIAL.

I WANTED TO HAVE JURY INSTRUCTION ON THE ISSUE OF
COMPETENCY Rule 5-602 (2)(B) AND REFUSED TO
OBEY TO INSTRUCTION I ASKED HIM TO.

I ALSO TOLD COUNSEL I DID FALL DOWN WHEN
SHERIFF CALLED ME TO WALK TO HIM AND I WAS
COERCED INTO SAYING NO BY SHERIFF DECEITLY AND
QUOTED BEHIND MY LAWYER'S BACK TO SAY NO I
ASKED HIM TO REQUEST A MISTRIAL TO NO AVAIL.
THE JURY SEEN ME SHAKING I TOLD MY
LAWYER TO REQUEST A MISTRIAL SHERIFF ALSO
TOLD ME TO SAY I ALSO NOT CALL ME
IS TO INSURE THE STATE. (B)

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P.O. Box 20005
Las Cruces, NM 88004

WNMCF
P.O. Drawer 250
Grants, NM 87020

NERNMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

Counsel
MR COSBY REFUSED to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

ALSO witness Priscilla Lopez and Ricky Jaramillo eye witnesses would of testified that I am Real Skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call Dr Fink as a witness at trial as I asked. Dr Fink would of testified that I was not competent and mentally ill

I asked counsel to call Dr. Joane Burgess to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness + intoxication and drugs.

I did express dissatisfaction with counsel and the court failed to inquire into the motive.

Counsel
MR COSBY promised if I testified I would be able to speak of sexual abuse by Nickor and my moms boyfriend He used to discriminate me. If counsel did not lie I would not have testified and trial may have been different together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I would take plea.

(C)

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WNMCF
P.O. Drawer 250
Grants, NM 87020

NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

Counsel did not call ISTEAL Ramirez who advised of testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime he tried to go see me.

Counsel failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, but the court refused to let me say anything about conflict between I and counsel.

I tried to put in record what trial counsel said after I tried to fire him. Court refused to inquire into it if the court had I'd of got a new attorney or a substitute + asked to represent myself.

I was denied my Sixth Amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record.

Thanks very much.

(d)

☐ CNMCF/CMRU/CMU
P.O. Drawer 1328
Los Lunas, NM 87031

☐ GCCF
P.O. Box 520
Santa Rosa, NM 88435

☐ LCCF
6900 W. Millen Dr.
Hobbs, NM 88244

☐ PNM
P.O. Box 1059
Santa Fe, NM 87504

☐ SNMCF
P.O. Box 639
Las Cruces, NM 88004

☐ SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004

☐ WNMCF
P.O. Drawer 250
Grants, NM 87020

☐ NENMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

ineffective assistance of appellate counsel
Saying in my appeal I abandoned to
Shaw counsel at trial was ineffective it
shows on record I asked to call
Dr. Maxine Sutter out was denied,
maybe I would of gotten on
evidentiary hearing on appeal
also I did not argue I did not receive
a fair sentencing out double jeopardy
on tampering with evidence.

I ask for a evidentiary hearing.

to show the true facts, not able
to write all the facts.
there is alot more.

I want to make a proper
record.

(X)

THE WAY TO USE THE
EXHIBITS WITH THE ISSUES
I claim + present.
Just go to page and
OR exhibit or both.
I am not a lawyer,
I had no more paper
to make it nice + neat.
I had to send it out
ASAP. + copies + ALL.
IM BEING IGNORED by
law library IN PRISON.
PLEASE. EXCUSE MY
MISTAKES.
MY BEST.

I TRIED
EXHIBITS
ISSUES
FACTS

FACTS + transcript, NEW YORK
discovery, to prove claim of
INEFFECTUOUS COUNSEL

SEE EXHIBIT 4, 5

MR. COSBY COUNSEL TRIAL DENIED
AND FAILED TO PROVIDE EFFECTIVE
ASSISTANCE.

A WEEK BEFORE TRIAL
I ASK TO FIRE MY ATTORNEY
DURING TRIAL IN COURT I
FIRED MY ATTORNEY. EACH TIME
THERE NO INQUIRE INTO WHY
I WAS EXPRESSING DISSATISFACTION
I WAS TOLD TWICE BY MR
COSBY BEFORE TRIAL STARTED
AND AFTER I TRIED TO FIRE
HIM IN COURT DURING TRIAL
COSBY STATED - I AM A LITTLE
STUPID BITCH AND I MADE
THREATS, BY SAYING I HOPE
YOU GET LIFE, I ALREADY TOLD
YOU TO TAKE THE PUN OR YOU
WONT BE PROVIDED EFFECTIVE
ASSISTANCE OF COUNSEL.
I WAS NOT ABLE TO PUT THE
ALLEGATIONS ON RECORD.
BUT SEE EXHIBITS (10) page 1, 2, 3, 4, 5
(10) page 38-47

THIS IS
PAGE 40

Page 2.

See Exhibit

Page 47

Page 3

S4 SS, SS, SS
Exhibit 13

Page 2

I TRIED to address COURT MY LAWYER WAS NOT Filing ANY OF my motions I ASKED him to, CHANGE OF VENUE, EVEN though there WAS PRE-TRIAL publicity concerning the case in small community of CBUS, NEW Mexico. Some of this publicity inaccurately described MR RUIZ as having attacked alleged victim on prior occasions, THE publicity WAS inaccurate and highly prejudicial and defense counsel should have at least raised the issue and requested a HEARING. SEE Exhibit, ~~Exhibit 3~~

Counsel should have at least Filed a motion to suppress Evidence that WAS illegally seized & inadmissible and highly prejudicial SEE Exhibit 11, or requested A HEARING ON this issue

See 11
Exhibit
Page
48
49
50

Counsel did NOT provide me with all discovery, would NOT discuss who He was planning to call as witnesses And would NOT discuss intent to present the defense OF INSANITY Counsel did NOT file a Notice OF Intent to present the defense Exhibit 1) page - 1, 2, 3, 4, 5

See 3
pages
3, 4

page 3.

page 3

EXHIBIT 1, 3, 10

page 4, 10, 12, 13
page 47

INSANITY, BUT INSTEAD OF ADVOCATING ZEALOUSLY ON BEHALF OF MR. RAMIREZ'S DEFENSE, COUNSEL INFORMED THE COURT THAT HE WOULD NOT BE PRESENTING EXPERT PSYCHIATRIST, OR PHYSICIAN, BECAUSE MR. RAMIREZ WOULD DISCUSS THE CASE WITH HIM AND IS UNABLE TO ASSIST IN THE DEFENSE.

COUNSEL FAILED TO ALERT THE COURT TO IMPORTANT FACTS IN ARGUING THE CASE. MR. RAMIREZ WAS

INJURED IN AN ACCIDENT IN 2007 WHICH HE BEGAN TAKING ANTI-

DEPRESSANT MEDICATION, & OTHER MEDICATIONS. THIS BECAME SEVERE

DEPRESSION AS HE WAS UNABLE TO WALK, WORK, OR DRIVE, COULD

ONLY WALK WITH CRUTCHES, SUFFERED FROM PSYCHOSOMATIC DELUSIONS,

HALLUCINATIONS, ~~AND~~ COUNSEL DID NOT PRESENT EVIDENCE OF THE MEDICATION MR. RAMIREZ WAS TAKING.

MR. RAMIREZ FELT HIS LAWYER WAS

AGAINST HIM, SEE page 4, 10, 12, 13

EXHIBIT 1, 3, ~~AND~~

SEE EXHIBIT 1, page 1-3
EXHIBIT 10, page 4
page 4

COUNSEL Failed to File any
WITNESS list WHATSOEVER IN
SUPPORT OF MR. RAMIREZ'S DEFENSE
OF INSANITY and lack of capacity

MR. RAMIREZ had several witnesses
He wished to present in support of
his defense, including his Aunt,
Sister, Brothers, Friends, and
doctors who treated him after
accident.

● COUNSEL failed to show courts JENNIFER SAID went
I was to cooperative
MR. RAMIREZ asserts that he de. witness used said I
would cooperate
was

received ineffective assistance of
COUNSEL for various reasons that
are, unfortunately, not on
record, because those MATTERS
were not preserved in the record.

MR. RAMIREZ REQUEST ~~that~~ that the
court grant him an attorney to
assist him in habeas proceedings
and to hold an Evidentiary
HEARING on the ineffective of
COUNSEL.

Exhibit 1. 2:12 05 PM
10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
COUNSEL VERBALLY ASSAULTED ME I
ADVISED COUNSEL. I DID FALL DOWN
IN FRONT OF JURY BECAUSE OF
THE SHACKLES ON MY LEG TIED TO
THE TABLE, WHEN I WAS TOLD TO
RISE, SHERIFF CALLED ME TO COURT
I FELL, JURY SAW MY SHACKLES,
WHILE MY LAWYER WENT TO TALK TO THE
JUDGE THE JUDGE, THE SHERIFF
DOUBTLY THREATENED ME AND TOLD
ME TO SAY I DID NOT FALL.
I WAS ASKED BY JUDGE DID YOU
FALL. I SAID YES THEN NO
BECAUSE SHERIFF WAS GESTURING
ME TO SAY NO. ONLY D.A.
COULD SEE. SHE WAS SHACKLING
HEAD & FINGER AND MOVING NO.
I TOLD MY LAWYER THIS AND
ASK HIM WHY DON'T HE SAY
IT TO THE COURT.
HE SAID NO I ALREADY MADE
UP MY MIND.

page 16

page 6

Exhibit 1 pages 1-5

Counsel Failed to Alert the court that
Told him I did Fall, Jury Saw
my shackles, Superior of docently
manipulated me to say no.
(TO GO AGAINST MYSELF) ASK docently SEEN
COUNSEL Failed to Call, Dr Fink,
Dr. BURGESS, Dr. MAXIMINE SWARTS
WHO I advised I had been
SEXUALLY ABUSED MY MOMS
big friend, + neighbor SAM SAIZ
SEE EX.BIT 24, 5 PAGES 417, 8, 12, 13
17, 18-27

COUNSEL Failed to Call witness, PRICILLA
LOPEZ, NERY TORRILLO, to help prove
I WAS the one being CHASED IN
YARD. to HELP prove my testimony
truthful,

SEE EX.BIT 7, 8, 10

COUNSEL Failed to investigate family
HISTORY OF MENTAL ILLNESS, and
family witnesses to defense of
INSANITY 4. 5.

I would try to call him and
write to talk he ignored me or was
too busy to. SEE EX.BIT. 4, 5, 7,
page 13 to 24 + 27 + 30 + 47

page 1

SEE

SEE PAGE 7

EXIB. + 2

EXIB 4.5

page 17

page 19

EX. BIT page 25

COUNSEL Failed to Keep Promises Made, of being able to testify

About Sexual Abuse and that he

would file motions I asked him

to file

page 47

SEE EXIBIT 4, 5, 10

1, 1A

COUNSEL Failed to call my father & brother

who would testify Eladio F-bledo

was violent and had assaulted me

and them in past.

My father and brother are willing

to testify to this at hearing.

COUNSEL Failed to call Dr Maxine

Swatts as witness who would

testify as to my insanity defense

and sexual abuse and incompetency

SEE EX. BIT 9, 10

page 39 to 43 + 47

COUNSEL Failed to present my

defense at trial.

~~COUNSEL Failed to~~

COUNSEL Failed to give me advice when

I asked once I was drunk when I killed my step dad. do I tell that or not. He didn't

421PA

page 8

page 8

COUNSEL Failed to GET MEDICAL
RECORDS to SHOW I WAS
ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of
the plea did not explain the
maximum & minimum time
I was facing even though I
tried to ask. (SEE PAGE 4) S. 4

COUNSEL Failed to Be respectful
and responsible and fulfill his
duty of loyalty and advocate
to me his client.

COUNSEL Failed to ARGUE I was
the one being chased by Robledo
that I was 100 pounds and Robledo
175 pounds, not 145 as medical
EXAMINER said, page - 7-10
SEE EXHIBITS 2,

COUNSEL Failed to Alert court
I was hearing voices during trial.
SEE EXHIBIT, 1, 1A, 4, 5, 6

SEE EXHIBIT - 9
page 34.35

page 9
APPELLATE COUNSEL

(APPELLATE COUNSEL failed to argue that trial counsel failed to call witnesses who would have testified to my mental illness, defense of insanity, or lack of capacity, or counsel made promises not kept.

APPELLATE COUNSEL failed to argue I was not given a fair sentencing hearing.

SEE EX-BIT.

APPELLATE COUNSEL failed to argue on appeal I told him I had been verbally assaulted by trial counsel little bitch, and threatened me with ineffective assistance if I refused to take plea.

APPELLATE COUNSEL failed to make aware Supreme Court of appeals of put in my appeal I wanted to represent myself.

page 1, 6

page 47

page 1, 6

SEE EXHIBIT 10

APPEAL COUNSEL FAILED TO ASK IN
APPEAL FOR AN EVIDENTIARY
HEARING ON ALL THESE PROBLEMS

COUNSEL FAILED TO ARGUE IT WAS
~~WAS~~ DOUBLE JEOPARDY TO CHARGE
ME TWICE WITH 31 ALLEGES ^{page 47}
TAMPERING WITH EVIDENCE. EXHIBIT 10

THE DISTRICT COURT FAILED TO
INQUIRE INTO THE MATTER
WHEN IT IS ON RECORD
MR. RAMIREZ COMPLAINED ON
MORE THAN ONE OCCASION ~~OF~~
TO THE JUDGE OF HIS FRUSTRATION
WITH DEFENSE COUNSEL. AND
EVEN THOUGH MR. RAMIREZ ASK
FOR SUBSTITUTE OF COUNSEL
TWICE BEFORE TRIAL AND
FIRED HIS ATTORNEY ONCE
IN TRIAL IN FRONT OF
JURY. AND ASKED TO
REPRESENT HIMSELF.

SEE EXHIBIT 1, ~~10~~, 6
PAGE 1 - SEE EXHIBIT 1
EXHIBIT 6 - PAGE 28.

page 4
page 1 through page 11
5
Exhibit 1.

Counsel Failed to communicate
Back with me Ramirez, even
though Mr. Ramirez tried
to no avail.

Mr Ramirez received Ineffective
Assistance of Counsel and denied
his Constitutional Right to
Effective Assistance of Counsel.

I Mr. Ramirez ask the Court
to appoint attorney to assist
with habeas process.

Mr Ramirez ask for an Evidentiary
Hearing to develop the record
necessary to prove allegations
- A disposition hearing also. -

Also attached witness statement by
my brother Jose Ramirez who spoke
to Mr Cosby and told me
to file my attorney.

Sincerely

A. B. S. T.
Ramirez

page 12

Page 12

THE EXHIBIT'S
ARE ONLY LABELED
1 to 13 and pages 1-56.
I did NOT label
1A, 1B, 1C, NO
ONLY, 1 to 13.

They are all relevant
to certain facts
+ allegations to
support my claim
OF. Ineffective assistance
OF COUNSEL trial +
APPELLATE ATTORNEY.

I ASK the courts
All them to NOT
dismiss my ~~CASE~~ ~~NOT~~
Habeas Because
I'm pro se, please appoint
me an attorney OR grant
an evidentiary hearing, or
preliminary hearing let me
prove my claim I
NEED A CHANCE.

I do have A WITNESS my
brother who CAN testify
to the THREATS made by
MR. COSBY. COSBY told my
brother to tell me to plea
my brother KNOWS OF the threats

COUNSEL did advice me to take
Plea But would NOT EXPLAIN
What the Plea WAS.

Also COUNSEL did NOT tell
me the maximum time
I WAS FACING
I did NOT KNOW.
I thought the most
I could get was
15 YRS.

I did NOT KNOW
MR. COSBY would NOT
ANSWER any OF my questions
OR EXPLAIN anything to me.

He was disrespectful,
MEAN, Rude, Unprofessional
and did NOT provide
effective ASSISTANCE.

COUNSEL would NOT call all witnesses
or file motions, change venue,
for private investigator, new
competency evaluation, see Ex. B + C
PAGES - 3, 4, 9

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RXEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE, ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD MR. GOSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM, I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

10/10/2013

14 of 16

page 1

Page 2

Exhibit 1

Page 2

The judge interrupted and asked the prosecution to lay a foundation. The prosecution asked Mr. Ramirez "Do you recall giving a lot of requests to go to the law library to research how to beat your charges?" The defense objected and asked to approach. The judge directed the prosecution not to ask those questions but said that he would not declare a mistrial. [10-10-13 CD B 1:56:15-1:58:25]

Later on October 10th, when Mr. Ramirez's defense counsel was finished questioning Mr. Ramirez's brother on direct examination, Mr. Ramirez interrupted the proceedings:

Mr. Ramirez: "Hey, your Honor, I got some questions I need to ask him."

Judge: "But you can't ask them."

Mr. Ramirez: "Why didn't you ask... I want to fire..."

Judge: "We're going to sit you in the other room if I hear anything more from you."

Mr. Ramirez: (speaking over the judge) "I fire him. He's fired. I want to represent myself... I have the right to fire him and represent myself! He's not representing me right!"

The Judge ordered Mr. Ramirez from the courtroom and excused the jury. [10-10-2013 CD B 2:09:45-2:10:30] Following the recess defense counsel spoke with Mr. Ramirez and the trial resumed with Mr. Ramirez present.

EXHIBIT 1

Page 2

Exhibit 1

But they all they
~~Appl to~~ me
cannot compare

proper word

3A Street
Dobie

Exhibit 18, ~~Exhibit 19~~ ~~Exhibit 20~~ Exhibit 1

Following the finding of competency and after nearly two years of silence, Defendant became an active participant in the process. At a July 29, 2013, status conference, he addressed the court regarding the letters he had written stating he wanted new counsel because Mr. Cosby had not fulfilled his duties and he was confused because Mr. Cosby was not telling him what was happening. [CD 7-29-

13, 9:35:13 to 9:36:25] Defendant asked for a continuance to get a new attorney,

to prepare his case and to have another psychiatric evaluation, which would show

he was suffering from "psychosomatic delusions and hallucinations and severe

depression and anxiety." [CD 7-29-13, 9:41:06 to 9:41:32, 9:36:58 to 9:37:20,

9:39:58 to 9:40:10] The trial court reviewed Defendant's file, stated it was

confident Mr. Cosby was providing Defendant competent representation, and

denied Defendant's requests for substitute counsel and a continuance. [CD 7-29-

13, 9:42:31 to 9:43:52] Defendant persisted in his desire for a continuance,

explaining he had "always been remorseful and everything," and he "would have

took the plea, but they gave me two-and-one-half extra years that [he] wasn't

supposed to get." [CD 7-29-13, 9:46:45 to 9:46:56]

Ultimately, Defendant's case did not go to trial until October 7, 2013. The

first day of trial, the jury heard testimony from Mr. Saiz, Ms. Finkey and a crime

scene investigator. The second day of trial, after the trial court released the jury for

the day, the prosecutor emphasized its first two witnesses the next day needed to

Exhibit 1

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:14:36 PM	COURT	HE HAS BECOME EXPLOSIVE AND SHOOTS OFF HIS MOUTH, GO TALK TO HIM AND SEE WHAT WE WILL DO, WE ARE CLOSE TO THE END
2:15:25 PM	RECESS	
2:36:30 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
2:37:06 PM	COSBY	HAVE DISCUSSED WITH MY CLIENT HIS OPTIONS HE HAS STATED HE FEELS HE NEEDS ME, I TOLD HIM EITHER I REPRESENT HIM OR HE REPRESENTS HIMSELF, I CAUTIONED HIM HE NEEDS TO OBEY COURT RULES, HE SAID HE WOULD RATHER HAVE SOMEONE ELSE BUT HE NEEDS ME, I EXPLAINED TO HIM AS FAR AS THE LAST WITNESS, THE WITNESS TELLS ME HE DOES NOT REMEMBER IN FRONT OF THE JURY, SO RATHER THAN CALL SOMEONE TO STAND THEY DON'T REMEMBER I JUST DON'T ASK THAT QUESTION, THERE ARE QUESTIONS THAT ARE NOT ASKED FOR REASONS
2:39:17 PM	COURT	LET THE RECORD REFLECT THAT MR. RAMIREZ HAS RETURNED TO THE COURTROOM AND MR. COSBY WILL BE CONTINUING HIS REPRESENTATION, NOT ANOTHER OPPORTUNITY TO CHANGE COUNSEL
2:39:55 PM		ADVISES DFT THAT THERE IS AUTHORITY THAT ALLOW YOU TO SIT IN ANOTHER ROOM TO WATCH TRIAL, IT IS AN OPTION IF YOU CONTINUE TO BE DISRUPTIVE YOU WILL SIT IN ANOTHER ROOM AND VIEW TRIAL BY VIDEO
2:40:48 PM	COSBY	HE ASKED ME IF IT WAS BETTER TO SIT IN ANOTHER ROOM, I TOLD HIM IT WOULD BE AGAINST HIS INTEREST TO VIEW BY VIDEO
2:41:36 PM	CHANDLER	I DON'T HAVE ANY XEX FOR MR. RAMIREZ BROTHER OF DFT
2:42:28 PM	COSBY	I HAVE TOLD HER WHAT SHE CAN SAY AND CANNOT SAY
2:42:40 PM		BENCH CONFERENCE
2:44:43 PM	COSBY	REGARDING PHOTO OF IVAN VASQUEZ SHOWING PHOTO OF HIM IN BOOKING, AND RECEIVED THIS LETTER
2:46:00 PM	CHANDLER	RELEVANCE TO THE PICTURE, COURT WILL NOT ALLOW PHOTO
2:47:19 PM		JURY BEING BROUGHT INTO COURTROOM
2:48:04 PM		OFF RECORD
2:51:51 PM		#3 WITNESS HESQUIA RAMIREZ CALLED BY COSBY / SWORN / DEX
2:52:03 PM		JURY BEING SEATED IN BOX
2:53:09 PM	CHANDLER	MR. JOSE RAMIREZ, THE STATE DOES NOT HAVE ANY QUESTIONS

Why was H not to speak

Rich
H

Exhibit 1

10/10/2013

12 of 15
Page 5

EXHIBIT 2 ^{page 4}

Sam Saiz

CSP or statutory rape

90s -

Δ (myer → Cosmo Ripel
DA → BSC
Judge Hensley

DOB: [REDACTED]

SS# [REDACTED]

3022

89-CR-10173

96-CR-12536 - OLT 3RD

THE minor
who set
Abused
me at 15 + 16
gay guy

EXHIBIT 2

page 4

06/20/07 19:15:04

Curry County Detention Center

Case #:

Page #

page 7

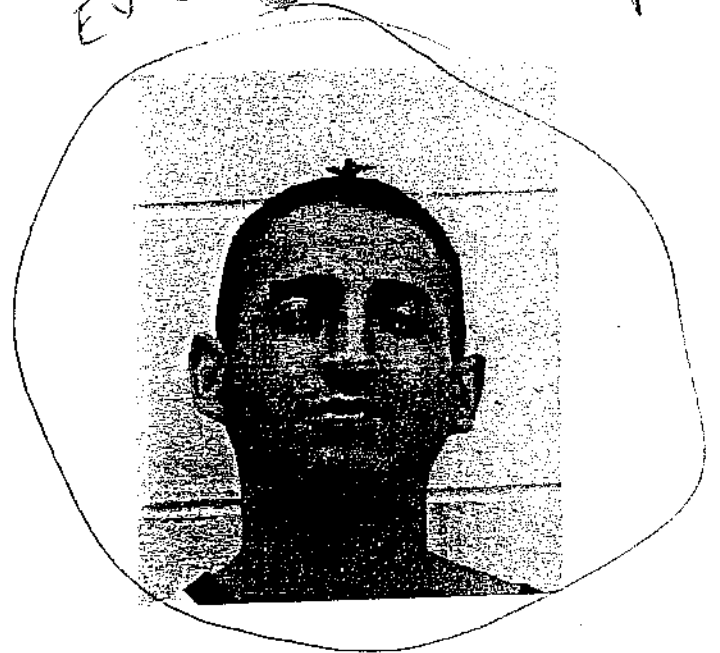
Booking Report #: 1025645
 Booking Date/Time: 06/20/07 19:11
 Name: RAMIREZ, ALBERT
 DOB: [REDACTED]
 1201 EDWARDS ST
 City: CLOVIS, NM 88101
 Phone:

Physical Info

Age: 18
 Race: W
 Sex: M
 Ethnic:
 Height: 5'05"
 Weight: 108
 Hair: BLK
 Eyes: BRO
 Skin:
 Facial:

Other Info

JRN: 47316
 FBI:
 MID:
 SID: NOT REQUIR
 Mug #: 47316.JPG
 SSN: [REDACTED] 7793
 Immig#:
 Fingerprint:
 OLN: NONE
 OLN State:



POB: CLOVIS, NM

Religion: NONE

School: CHOICES HIGH

Grade: 12 Stat: DROP OUT GED: N APS:

Dangerous: 2 Hate/Bias: NONE

Gang: NONE

Gang Moniker:

Scars / Tattoos: NONE

Employer

		Date	Time
Custody Officer	120 - MARTINEZ, S	06/20/07	16:15
isting Officer	120 - MARTINEZ, S		
sport Officer	120 - MARTINEZ, S		
Probation Officer			
Admitting Officer	D33 - CARVEY, T		
Fingerprint Officer	D30 - MARQUEZ, D	06/20/07	19:11
Detain Auth Officer	A48 - LOZANO, M		

Billing Agency # CPD CLOVIS PD
 Custody Agency # CPD - CLOVIS PD
 Housing Facility CURRY CTNY ADC
 Arrest Location 300 N. CONNELLY
 Offense Location

Release Auth Officer 1 - MAG COURT 00:00
 Release Officer 00:00
 Release Type: Release To:
 Detainer 1:
 2:

Class: DETOX
 Points: 2
 Reason: DETOX

Attorney:

ACTIVE: Y Work Release: N Community Service: N Interpreter:

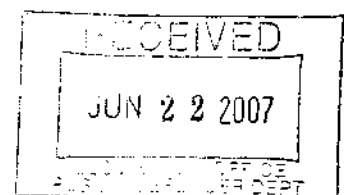
Comments:

CHARGES/COURT INFORMATION


IBR #	NCIC #	Violation	Statute	Disposition	Date	Bond Amt/Type	Warrant #	Sentence
290	048	CRIMINAL DAMAGE	30-15-1	MISD	06/20/07	1000.00 C	M12MR200700472	MAGISTRATE

ME the SEX Abused
 Victim.

EXHIBIT 2



page 7

ROBLEDO, ELADIO 2007-03764	 AUTOPSY REPORT THE UNIVERSITY OF NEW MEXICO & HEALTH SCIENCES CENTER OFFICE OF THE MEDICAL INVESTIGATOR <hr/> School of Medicine Albuquerque, New Mexico 87131-5091	1
-----------------------------------	--	---

POSTMORTEM EXAMINATION

An autopsy is performed on the body of Eladio Robledo at the Office of the Medical Investigator, State of New Mexico, on the 13th day of July 2007, commencing at 10:00 AM.

The examination is performed under the legal authority of the Office of the Medical Investigator of the State of New Mexico.

The body is received within a sealed body bag, with a "State of New Mexico, Office of the Chief Medical Investigator" evidence label, bearing the following printed and handwritten information: "Name of Deceased: Robledo, Eladio; Sealed by: 6.37; Date: 7-12-07".

MS OK

EXTERNAL EXAMINATION

The body is that of a well developed, well nourished, adult, Hispanic male who weighs 145 pounds, is 72 inches in length, and appears compatible with the reported age of 39 years. There are pink and green OMI identification bands around the right wrist inscribed with identifying information.

The body is received clad in a pair of white brief-style underpants, which are partially cut off the body for resuscitation. There are no accompanying personal effects.

The body is cool. Rigor mortis is fully fixed. Minimally evident, blanchable purple livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure.

The scalp hair is black, wavy, and measures up to 2 inches in length over the crown. The irides are brown. The pupils are round. The corneae are translucent. The sclerae are white and the conjunctivae are clear. No petechial hemorrhages are identified on the sclerae, bulbar conjunctivae, facial skin or oral mucosa. The nose and ears are normally formed, without pierce marks. The decedent wears trimmed mustache and beard stubble. The teeth are natural and in good condition. The neck is unremarkable.

The thorax is well developed and symmetrical. The abdomen is flat. The anus is free of lesions. The spine is normally formed and the surface of the back is free of lesions.

The external genitalia are those of a normal adult male.

The upper and lower extremities are well developed and symmetrical, without absence of digits.

No identifying marks or scars are readily apparent.

Evidence of medical intervention includes an orotracheal tube (correctly placed), seven electrocardiograph patches and two defibrillator pads over the anterior chest, a right antecubital intravenous line, a left antecubital intravenous line,

*8 The man who set over
 caused my E. visit 2*

Page 8

Service No. 306316

Incid# 07-0033238 Pt# 0001

FDID# 09013

OUT OF HOSPITAL CARE REPORT

Clovis Fire Department

Unit No. 24

Alarm Date 07/12/2007

EXHIBIT 2
Disposition

Transported to 9 PRMC/Clovis

Dest Determined by 06 Protocol

Mode of Transport 1 Ground

Diverted To

Patient Tied With

Patient Disposition 01 Treated, Transported by EMS

Lights/Siren from Scene? Emergent, with lights or siren

Pulse on Transfer 2 No

Insurance

Type

Policy #

Group #

Insured Name

Patient Narrative

Ambulance 1 arrived at 512 West 6th with a report of a subject on the ground. Ambulance 3, Bill Baca and myself arrived at the same time. Patient was lying with his head to the north on his left side in a pool of blood. Patient was placed on a LBS board, placed on the stretcher and taken to the ambulance where IV's, O2 and intubation was being prepared.

EMS Personnel was asked to gown up and get ready to transport code 3. K Burns prepared to intubate the patient. Ben Black was assisting with airway procedures, Chris Elam, Mike Nolen and J. Boyd, worked on IV's, Bill Baca was hooking up the monitor, and spiking IV fluids for the lines that were being attempted. John Bradley was handing personnel equipment that requested additional supplies. Suction was prepared by Bill Baca since the patients airway was full of blood. In trying to suction it was noted that we would get a tremendous amount of coagulated blood and mucous. Suction was not effective or were we able to get a clear site of the vocal cords. A Combi Tube was placed and lung sound were diminished on both sides when bagged with 100% O2.

The initial pulse was weak at the carotid, with blood and mucous streaming out the patient's mouth and nose. Once airway was established we felt for a pulse to find no pulse, but had an organized rhythm on the monitor. PEA was identified and the ACLS protocol was initialed as we arrived at PRMC. CPR was started, and bagging with 100% O2 was continued. We arrived at PRMC with patient moving the patient from the ambulance into C-2 where personnel stayed and helped staff with patient care.

It was noted that the patient was shot twice in the head, once in the chest, once in the abdomen, and once in the arm. Patient was never revived at PRMC and pronounced dead at 1405 by Dr. Patterson.

D - DISPATCHED:

On 07/12/2007 at 13:41:00 dispatched to 515 W 6TH ST /Clovis, NM 88101 for Shots Fired. 13:41:00 unit 24 en route.

C - CHIEF COMPLAINT:

13:43:08 unit 24 arrived to find a 39 year-old Male with a weight of 79.4kg./175lbs. patient complaining of Gun Shot to Patient.

H - HISTORY:

A - ASSESSMENT:

Ems found Traumatic Injury during assessment.

Patient's sign and symptoms are:

Rales

Crepitus

Hemorrhage

Contusion

R - TREATMENT:

The following medications, treatments, and vitals were performed on the patient:

Time: 13:44:00 Blood Pressure: 0/0 Palp Temperature: Not Assessed G Eye: 1

G or: 1 G Verbal: 1 Gcs Total: 3 Notes: Patient was lying in a pool of

07/16/2007

12:18

Page

*Look AT THIS
175 pounds*
EXHIBIT *2**page 9*

Exhibit 3
3 page 10

Defense counsel argued at the hearing that the doctor didn't administer neurological or intelligence tests, didn't review Mr. Ramirez's school records, didn't contact the juvenile probation office to find out about any prior psychiatric care or drug use, and only met with him for five or six hours. [CD 9/15/08 2:24:15, 2:31:15, 2:41:00]. Counsel maintained his belief that Mr. Ramirez was unable to assist in his defense and requested that Mr. Ramirez be sent back to Las Vegas for a more thorough competency evaluation, for his medications to stabilize, and to be administered neurological tests. [CD 9/15/08 2:41:00]. The district court denied Mr. Ramirez's request for another competency evaluation and declared him competent to stand trial. [RP 158-59].

Trial on the first degree murder and tampering with evidence charges was set for January 26, 2009. [CD 1/26/09 8:56:00]. That morning, the parties conducted jury selection. [CD 1/26/09 9:07:30-12:05:00]. During a break, the parties discussed a plea offer that had been previously made and were able to come to an agreement. [CD 1/26/09 3:03:15]. Pursuant to the agreement, Mr. Ramirez pled guilty to first degree murder and stipulated to a life sentence. [RP 300-302]. Prior to trial, Mr. Ramirez was also charged in separate cases with two counts of battery upon a detention officer and one count of assault. [RP 300-01, 333]. Under the plea, the two tampering with evidence charges were dismissed, as well as one of the battery charges, but he pled guilty to assault and battery against a detention

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Exhibit 3

page 1

EXHIBIT 3

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Projected Date of Discharge: Within approximately 9 months.

Patient's Level of Participation in the Plan: At this time, Mr. Ramirez seems to willing to cooperate with his treatment plan.

Family/Support System Input/Desires: Evaluation is ongoing.

Legal Considerations Which May Impact Treatment: Mr. Ramirez has criminal charges pending. He is here on a court order for treatment to attain competency.

Least Constrictive Conditions for Treatment: Mr. Ramirez was ordered by the court to remain in a secure locked facility during the time of his evaluation and course of treatment.

Criteria for Transfer to a Less Restrictive Setting: As per court order.


Discharge Criteria: As per court order.

Potential Barriers to Discharge and Strategies to Overcome Them: Evaluation is ongoing.

Recommended Follow-up Treatment, Living, Skill, and Support Requirements: To be reassessed at the time of discharge.

Anticipated Length of Stay: Approximately 9 months.

Discharge Plan: As per court order.


CHRIS S. MANZANARES, LBSW
Staff Social Worker

Date: 6/18/14

CSM/AHS-644
D: 06/16/2008 1819
T: 06/16/2008 2356
J: 532576

EXHIBIT 3

June 16, 2008
FTUD

EXHIBIT 3

RAMIREZ, ALBERT
MR: 42819

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S. R. 3

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MENTAL HEALTH RESOURCES, INC. **OUTPATIENT CLINICAL ASSESSMENT**

* Please note: clinical assessment must be completed within 30 days of admission

Initial: ☒ Annual update: 1st year ☐ 2nd year ☐ year ☐ Client ID # 4393 Completion Date: 1/18/07

I. PATIENT INFORMATION

Client Name: (Last) Ramirez First: Alberto MI: Male: ☐ Female: ☐

Client's primary residence

☐ Their Home (house, apartment, room) ☐ Friend's home ☐ Relative's home ☐ Group home ☐ Foster Care
☐ Jail ☐ Nursing home ☐ Assisted Living ☐ Shelter ☐ Currently Homeless ☐ Other

Phone: Address: City: CIOVR State: NM Zip: 88101

Client Age: 19 DOB: 88 Soc. Sec: 793 Marital Status: ☐ Mar. ☒ Sin. ☐ Div. ☐ Wid. ☐ Sep ☐ Other
 Race: ☒ White ☐ Native Am. ☐ Black/African ☐ Am Asian ☐ Pacific Islander ☐ Alaska Native
 Ethnicity: ☒ Hispanic ☐ Mexican ☐ Cuban ☐ Puerto Rican ☐ Latino ☐ Not Hispanic Origin ☐ Mexican Am. ☐ Central Am. ☐ South Am.

 Parent/Guardian/Custodian/Power of Attorney if Minor (include name & address) NONE
 Parent/Guardian/Custodian Phone () N/A

 Emergency Contact (include name & address) Relationship to the Client: Emergency Contact Phone
 HUSGUA Ramirez 220 Chaparral Sister (505) 742-7940

Referral/Source (please give specific name): SIF Household Annual Income: 0 Client Annual Income: 0 Household income source: 0 Client incomes source: 0

Employer's Name: N/A Phone: N/A School: N/A Ed. Level: 12

Current PCP: N/A Address: N/A Phone: N/A

Please give a brief description of the presenting problem, including source of distress, precipitating events associated problems and symptoms: Client feeling sad, mad, exp. psychosis, mood lability

Le problems: ☐ No ☒ Yes Explain: Currently facing charges of murder

If the client is a minor please describe the following in relation to Psychosocial/Developmental history: N/A

Psychological functioning:

Intellectual functioning:

Educational/vocational functioning:

Social functioning:

Developmental functioning:

Substance abuse:

Culture:

Leisure and recreation:

II. RISK ASSESSMENT

A. ☒ No current risk at the time of this assessmentB. Have you ever thought about harming yourself or someone else? ☒ No ☒ Yes, if yes, did you have a plan? ☒ No ☐ Yes

When was the last time you thought about harming yourself or someone else? November 1, 2007

C. Have you ever harmed/injured yourself or someone else intentionally? ☒ No ☐ Yes, if yes, did you have a plan? ☒ No☐ Yes. When was the last time you thought about harming yourself or someone else?
 ONLY complete the rest of the risk assessment questions, if the response to section B or C is yes
 (note: complete section D if the risk is harm to self and/or section E if the risk is harm to others)

D. Risk of harm to Self: Indicate which of the following suicide (harm to self) risk factors apply to the person:

Prior suicide attempt: ☒ No ☐ Yes Behavioral cues (isolation, impulsivity, withdrawn etc): ☒ No ☐ YesRepeated attempts: ☒ No ☐ Yes Symptoms of psychosis (command hallucinations): ☐ No ☒ YesStated plan with intent: ☒ No ☐ Yes Family history of suicide: ☒ No ☐ YesAccess to means (e.g., weapon): ☒ No ☐ Yes History of suicide in friend: ☒ No ☐ YesSuicide use: ☒ No ☐ Yes Terminal physical illness: ☒ No ☐ YesOther self-injurious behaviors: ☒ No ☐ Yes Current stressors: ☐ No ☒ YesRecent losses/ lack of support: ☐ No ☒ Yes Others: ☒ No ☐ Yes

Please provide explanation(s) for any of the above risk factors that were indicated with a yes response: Client denied

2/14/07 but continued to on 11/1/07 waiting on the back then he wanted

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Client Name: <u>Albion Kaur, Id3</u>		File #: <u>9395</u>
IV Psychiatric (cont)		
F. SYMPTOMS SCREENING		
Depression	<input checked="" type="checkbox"/> usual depressed mood <input type="checkbox"/> anhedonia <input type="checkbox"/> weight loss <input type="checkbox"/> weight gain <input checked="" type="checkbox"/> sleep disturbance <input type="checkbox"/> psychomotor retardation/agitation <input type="checkbox"/> fatigue <input checked="" type="checkbox"/> worthlessness <input type="checkbox"/> guilt <input checked="" type="checkbox"/> poor concentration <input type="checkbox"/> suicidal ideation <input checked="" type="checkbox"/> hopelessness <input checked="" type="checkbox"/> anxiousness <input type="checkbox"/> decreased energy/motivation <input type="checkbox"/> uncontrollable crying spells	
Anxiety	<input type="checkbox"/> restlessness <input type="checkbox"/> easily fatigued <input type="checkbox"/> poor concentration <input type="checkbox"/> irritability <input type="checkbox"/> muscle tension <input type="checkbox"/> sleep disturbance <input type="checkbox"/> excessive anxiety and worry <input type="checkbox"/> inability to control worry.	
Phobia/ Panic	<input type="checkbox"/> abrupt development of panic attacks accompanied by palpitations: <input type="checkbox"/> sweating <input type="checkbox"/> trembling <input type="checkbox"/> shortness of breath <input type="checkbox"/> feeling of choking <input type="checkbox"/> chest pain <input type="checkbox"/> nausea <input type="checkbox"/> dizziness <input type="checkbox"/> light headedness <input type="checkbox"/> derealization <input type="checkbox"/> fear of losing control <input type="checkbox"/> fear of dying <input type="checkbox"/> numbness <input type="checkbox"/> chills <input type="checkbox"/> hot flashes <input type="checkbox"/> agoraphobia <input type="checkbox"/> excess/persistent fear of stimuli avoidance	
Mania	<input type="checkbox"/> grandiosity <input checked="" type="checkbox"/> decreased sleep <input checked="" type="checkbox"/> talkativeness <input checked="" type="checkbox"/> flight of ideas <input checked="" type="checkbox"/> distractibility <input type="checkbox"/> increased goal directed activity <input type="checkbox"/> increased anxiety/agitation <input checked="" type="checkbox"/> elevated/expansive <input checked="" type="checkbox"/> irritable mood <input checked="" type="checkbox"/> pressured speech <input checked="" type="checkbox"/> psychosis <input type="checkbox"/> increased compulsive/addictive behavior	
Post traumatic stress	<input type="checkbox"/> experienced traumatic event (event: _____ date: _____) <input type="checkbox"/> re-experiencing trauma avoidance of stimuli associated with trauma <input type="checkbox"/> increased physical/emotional arousal dissociative symptoms <input type="checkbox"/> amnesia	
Psychosis	<input checked="" type="checkbox"/> hallucinations <input checked="" type="checkbox"/> delusions <input checked="" type="checkbox"/> paranoia <input checked="" type="checkbox"/> disorganized speech <input type="checkbox"/> bizarre/catatonic behavior <input checked="" type="checkbox"/> flat or inappropriate affect	
Organicity	<input type="checkbox"/> decreased consciousness <input type="checkbox"/> impaired memory <input type="checkbox"/> perceptual disturbance <input type="checkbox"/> impaired intellectual functioning <input type="checkbox"/> impaired judgement <input type="checkbox"/> labile affect	
Impulse Control	<input type="checkbox"/> property destruction <input type="checkbox"/> explosive/assaultive behavior <input type="checkbox"/> inability to control destructive impulses <input type="checkbox"/> pleasure gained from acting out <input type="checkbox"/> gambling <input type="checkbox"/> kleptomania <input type="checkbox"/> pyromania <input type="checkbox"/> trichotillomania	
Substance Abuse	<input checked="" type="checkbox"/> failure to fulfill major role obligations <input checked="" type="checkbox"/> physically hazardous use <input checked="" type="checkbox"/> legal problems <input checked="" type="checkbox"/> use in spite of negative psychosocial consequences	
Substance Dependence	<input type="checkbox"/> tolerance <input type="checkbox"/> withdrawal <input checked="" type="checkbox"/> using more than intended <input type="checkbox"/> unsuccessful efforts to quit <input checked="" type="checkbox"/> increased time spent obtaining/recovering <input checked="" type="checkbox"/> reduction in psychosocial functioning <input checked="" type="checkbox"/> continued use in despite negative consequences	
Attention Deficit Symptoms	<input type="checkbox"/> inattention <input type="checkbox"/> hyperactivity <input type="checkbox"/> impulsivity functional impairment at:	
Anti-Social Conduct	<input type="checkbox"/> aggressive behavior toward people/ animals <input type="checkbox"/> stealing <input type="checkbox"/> lying <input type="checkbox"/> vandalism <input type="checkbox"/> violating rules at school/home/community	
Oppositional Conduct	<input type="checkbox"/> losing temper arguing <input type="checkbox"/> defiance annoying others <input type="checkbox"/> blaming others <input type="checkbox"/> denying problems <input type="checkbox"/> easily agitated angry/resentful <input type="checkbox"/> spiteful/vindictive	
Other Symptomology	<input checked="" type="checkbox"/> frustration <input checked="" type="checkbox"/> mood lability <input type="checkbox"/> running away <input type="checkbox"/> separation anxiety <input type="checkbox"/> developmental delay <input type="checkbox"/> learning difficulties <input type="checkbox"/> adjustment issues <input type="checkbox"/> below average IQ <input type="checkbox"/> autism <input type="checkbox"/> verbal/motor tics <input type="checkbox"/> encopresis <input type="checkbox"/> enuresis <input type="checkbox"/> neurological deficits <input type="checkbox"/> school problems <input checked="" type="checkbox"/> maladaptive family issues <input checked="" type="checkbox"/> low self esteem <input type="checkbox"/> peer relationship issues <input type="checkbox"/> gang involvement <input type="checkbox"/> blended family issues <input type="checkbox"/> truancy <input type="checkbox"/> sexual promiscuity <input type="checkbox"/> sexual identity <input type="checkbox"/> somatization <input type="checkbox"/> conversion <input type="checkbox"/> hypochondria <input type="checkbox"/> producing physical symptoms <input type="checkbox"/> malingering <input type="checkbox"/> intrusive obsessions/compulsions <input type="checkbox"/> pathogenic personality <input type="checkbox"/> sexual dysfunction <input type="checkbox"/> paraphilia dyssomnias <input type="checkbox"/> self mutilation <input type="checkbox"/> dissociative states <input type="checkbox"/> bereavement <input type="checkbox"/> recent physical injury <input type="checkbox"/> chronic illness <input type="checkbox"/> anorexic bulimic behaviors	

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Rational Standard for Competency-to-Stand-Trial Assessments, 22 Journal of Am. Acad. Psychiatry and Law, 231, 237 (2004). Mr. Ramirez argues, consistent with the article, that two separate evaluators came to different conclusions and that, in light of the problems in Dr. Burness' methodology—not administering neurological or intelligence tests, not reviewing Mr. Ramirez's school records, not contacting the juvenile probation office to find out about any prior psychiatric care or drug use, and meeting with him for only a few hours—this is like “flipping coins in the courtroom.” *Id.*

Because the district court abused its discretion in denying Mr. Ramirez's request for a more thorough competency hearing, this case should be remanded for a new trial with instructions to order another competency evaluation for Mr. Ramirez.

Issue 3: Mr. Ramirez Received Ineffective Assistance Of Counsel.

Mr. Ramirez relies upon his arguments in the brief in chief in support of this issue.

II. CONCLUSION

For the forgoing reasons, the trial court abused its discretion in denying Mr. Ramirez's motion to withdraw plea, and denying his request for a more thorough competency hearing, and the case should accordingly be remanded to the district court for trial, or alternatively, an evidentiary hearing to determine whether the plea

EXHIBIT 3

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6/13/2014

Accused killer takes witness stand - Clovis News Journal

Ramirez, who was 18 years old when he said he shot Robledo, has a history of mental illness, according to family members, three of whom testified Thursday as defense witnesses.

A psychologist found Ramirez competent to stand trial.

Cosby struggled to keep Ramirez on point through much of his rambling testimony, drawing objections from Chandler and repeated instructions from Hartley to simply answer Cosby's questions.

Ramirez said he purchased the .22 caliber handgun he used in the homicide to protect himself from gang members who had threatened him. He said he had no intention of shooting or killing Robledo.

Ramirez said he went to the home Robledo had kicked him out of to get his clothing and electronic gadgets. No one was in the house and his room was padlocked shut, he said, so he went looking for Robledo in the garage behind the house.

Ramirez said he and Robledo got in an argument and Robledo backhanded him across the face.

"I was scared," said Ramirez, his voice quaking. "He (Robledo) spoke in Spanish and said he was going to get his pistola."

Ramirez said Robledo then hit him with his fists and started choking him.

"My only option was to shoot. He tried to take the gun (away) and shoot me."

During an hour-long grilling by Chandler on cross examination, Ramirez admitted he gave a stranger \$30 to purchase a \$10 box of bullets for the handgun at the Clovis Walmart the day before the homicide. Chandler also confronted Ramirez with testimony that no bruises were found on his neck when arrested three days later and no bruises were found on the victim's body or hands.

"The fact of the matter," said Chandler, "is it (the fight) didn't happen. He didn't punch you did he?"

"Yes he did," said Ramirez.

Chandler said testimony from previous witnesses was that Ramirez was seen chasing down Robledo after shooting him twice in the chest and the victim fell to the ground.

"Eladio was lying on the ground dying and you shot him in the head," Chandler charged.

"I shot towards the ground," said Ramirez. "I didn't know where I hit him."

A state medical examiner testified earlier that Robledo died of the wounds to his chest and two bullets fired into his right temple.

Ramirez also admitted during Chandler's cross-examination that he hit a girl in the face "who was beating up my cousin" and head-butted a police officer in other unrelated violent confrontations.

Hesiquia Ramirez testified her brother "had his own little issues" with mental illness long before the homicide.

During a confrontational cross examination, Chandler challenged her, noting discrepancies in her testimony and what she told police on the day of the killing.

As her brother was taken from the courtroom at the conclusion of the day, Hesiquia waved to Ramirez and said "Love you" in a hushed tone.

The jury is expected to get the case after closing arguments today.

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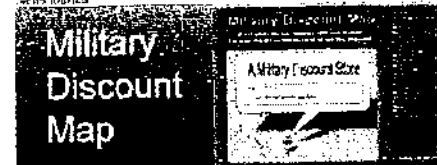
☐ No.

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CMI PROMOTIONS

Clovis
Semi-Insured



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Filed Under: Featured News, News

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Mar 17 2008 4:18PM

Maxann Shwartz, Ph.D.

5059213365

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home -
all 505-331-7224 JG 1150 JG**MAXANN SHWARTZ, PH.D.**
Licensed PsychologistExhibit
4, 53228 Los Arboles Ave. NE
Bldg. A, Suite 230
Albuquerque, New Mexico 87111All
papersNew Mexico License 0922
California License PSY15845
Telephone: (505) 331-7224**FORENSIC NEUROPSYCHOLOGICAL EVALUATION****(CONFIDENTIAL)**

This report is confidential, and unless its release is in accord with the rules of criminal or civil procedure, it should not be released to anyone without written consent of the defendant. While the defendant does have a right to see this report, it is strongly recommended that (s) he do so in the presence of the psychologist so that the findings and results can be properly interpreted and any questions or concerns can be addressed. If the report is given to the defendant by anyone other than a psychologist, it is highly likely that (s) he can misunderstand the report's content, and the information may not necessarily present him/her in a favorable light.

NAME: RAMIREZ, Albert Jose
DOB: [REDACTED] 1988
AGE: 19 years-old
SS#: [REDACTED]
COURT NUMBER: D-905-CR-0200700434
EXAMINER: Maxann Shwartz, Ph.D.
DATE(S) OF EVALUATION: 03/10/2008
DATE OF REPORT: 03/14/2008
REFERRED BY: Brett J. Carter
 Counsel for Defense
 State of New Mexico/Curry County
 Ninth Judicial District

deval
I asked for her to
be a witness

Exhibit 475
She would have
testified this in
court

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Exhibit 1.5

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
10:24:46 AM		WHO ELSE DID YOU CALL, HE WAS NOT A FRIEND, I TOLD HIM TO GET THE THING, DO YOU KNOW OF ANYBODY HAS THAT GUN
10:25:33 AM		THERE WAS A GUY IN FRONT OF STORE OF RAGS TO RICHES I BELIEVE HE GOT THE GUN, I JUST HAD SOX AND BOXERS
10:26:34 AM		DID YOU PLAN ON KILLING MR. ROBLEDO "NO"
10:27:11 AM		WERE YOU THERE THAT DAY TO AMBUSH YOUR MOM'S BOYFRIEND "CAN I SPEAK MY MIND", IF I WANTED TO KILL MY MOM OR ROBLEDO, I COULD GO IN THERE AND GO TO MY ROOM AND GET SOMETHING TO EAT. ETC.
10:28:14 AM		WHEN HE TOLD YOU HE WAS GOING TO GET PISTOLA "THAT IS A PISTOL" THAT WAS NOT HIS AMMO IN GARAGE
10:28:59 AM		I KNEW HE HAD A WEAPON, I USED TO SMOKE MARIJUANA I WAS LOOKING FOR MONEY AND I SAW A GUN IN HIS DRAWER
10:29:40 AM		I THOUGHT I WAS IN DANGER
10:29:53 AM		BENCH CONFERENCE
10:30:37 AM	COURT	CONNOR TAKE A BREAK
10:31:21 AM		JURY EXCUSED FROM COURTROOM
10:31:36 AM	OFF RECORD	
11:03:22 AM		COURT IN SESSION JURY BEING SEATED IN BOX, DFT AND ALL PARTIES PRESENT
11:03:58 AM	COURT	INSTRUCTS JURORS GOING TO AN EARLY LUNCH BE BACK BY 12:45 P.M.
11:04:37 AM	RECESS	
12:49:46 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES ARE PRESENT
12:50:29 PM	CHANDLER	DFT PUT FORWARD THAT THE VICTIM WAS A FIRST AGRESSOR, ANY TYPE OF SPECIFIC CONDUCT
12:51:31 PM		WHAT TRAIT DO YOU THINK IS DELIBERATE AND WILLFUL MURDER
12:51:52 PM	CHANDLER	RESPONDS, NOW WE HAVE AN OPPORTUNITY THAT OUR VICTIM WAS NOT THE AGRESSOR
12:52:26 PM	COSBY	AS FAR AS THE SITUATION OF THE JAILER, HAD NOTHING TO DO WITH HIS CHARACTER ETC.
12:52:50 PM	CHANDLER	READS RULE 404-A-2 SEC. B
12:54:32 PM	COURT	WILL LET YOU GO AHEAD AND DO IT, BETTER WAY TO DO IT
12:54:50 PM	COSBY	I WILL ASK YOU TO RE VISIT SEXUAL ISSUE
12:55:21 PM	COURT	OBJECTION NOTED
12:55:43 PM	DFT	COMMENTS

10/10/2013

Exhibit 1.5

-6546

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16. Photo (exhibit 10d)
17. Media Advisory Clovis Police Department (exhibit 10e)
18. Grah's notes/ Action Sheet (exhibit 10f)
19. Inmate Calling Solutions (exhibit 10g)
20. Plateau Wireless (exhibit 10h)
21. Call Records 505-309-7772 (exhibit 10i)
22. SMS Records 505-714-2165 (exhibit 10j)
23. Call Records 505-309-4299 (exhibit 10k)
24. Call Records 505-309-7759 (exhibit 10l)
25. Master Name Inquiry (exhibit 10m)
26. Curry County Detention (exhibit 10n)
27. Photo Lineup (exhibit 10o)
28. Curry County Detention (exhibit 10n)
29. #1 Value Inn Guest Registration (exhibit 10r)
30. State of New Mexico, Ninth Judicial District, Office of the District Attorney (exhibit 10s)
31. Information from John Garcia to Roger Grah (exhibit 10t)
32. Photo Lineup (exhibit 10u)
33. The University of New Mexico (UNM) Office of The Medical Investigator (exhibit 10v)
34. Index- List of Exhibits

PSYCHOLOGICAL TESTS/PROCEDURES ADMINISTERED

- 5 • Structured Clinical Interview
- 4 • Review of List of Exhibits
- 1 • Mental Status Exam (MSE)
- 2 • Mini Mental Status Exam (MMSE)
- 6 • Trail Making Test
- 7 • Clock Face
- 8 • Portions of The Revised Competence Assessment Instrument

→ Mental Status Examination: ✓

Behavioral Observations:

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male who was unable to be evaluated due to grossly disorganized behaviors consistent with the positive symptoms associated with a psychotic disorder, including but not limited to: disorganized thinking; rambling, nonsensical speech; paranoia; depersonalization; reports of auditory hallucinations; labile mood; inappropriate affect; loose associations; and poor reality testing. Mr. Ramirez was dressed in the required uniform of the Curry County

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MAR 18 2008

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EXIBIT 4.5 page 10

5 Detention Center and had his undershirt on backwards. Mr. Ramirez was unable to perform even simple, goal-directed tasks. He maintained minimal to no eye contact. He evidenced uncontrollable crying throughout the evaluation with uncontrollable shaking. His attorney, Brett Carter, was present in attempt to calm him down and encourage him to participate in the evaluation. Food (McDonald's) was also used as a reinforcer and as an attempt to calm him down. While Mr. Ramirez was eating, he appeared to be more placated and was able to answer several questions. Specifically, he elaborated on being abused by several people, including his foster dad (physical abuse), a neighbor (sexual abuse) and his mother's boyfriend (sexual abuse). However, the majority of his responses to this examiner's questions were answered with "I don't know," or "that's all I know." Otherwise, he attempted to cooperate but eventually would start crying and become hysterical. Occasionally, he was able to provide several coherent and logical responses, however, his thinking would then be followed with tangential remarks with frequent references to his foster dad or paranoid verbalizations, i.e. "I'm scared of everyone. That's all I know. There's something wrong with my mind." For the most part, he was unable to provide any relevant background history. Mr. Ramirez was questioned numerous times about what happened regarding his alleged charge of murder and replied each time with "I used to be a good kid," or "I wasn't like this," and "I just want to talk to my mommy." Mr. Ramirez was unable to read as he could not maintain attention or concentration. He was given the Trail Making Test and was unable to complete one Trail. In sum, he was unable to complete any standardized testing procedures.

Orientation: He was oriented to person, but was poorly oriented to time, date, or location.

Affect/Mood: Mr. Ramirez' mood was labile with congruent affect. He stated that his mood was "very depressed, very bad...I'm so depressed!"

Perception/Thought Process: His thought process was tangential and loose. His thinking was easily derailed as he evidenced paranoia with depersonalization, i.e. "I can't feel my arm that much...I don't know," "I wasn't like this," and "What happened...the real me is full of pain." He acknowledged that he experiences auditory hallucinations, stating "I hear people talking in my head...saying kill myself." He denied visual hallucinations. He presented with frank paranoid ideations.

2 Mini Mental Status Exam: Mr. Ramirez was administered the Mini Mental Status Examination (MMSE), a widely used screening instrument used to assess cognitive impairment. His results were within the severely impaired range (16/30) and appeared to be due to the presence of a functional psychosis. Mr. Ramirez exhibited poor immediate memory, concentration, and attention.

Memory: His overall memory appeared questionable, e.g. he could not remember the city where he was born.

Judgment/Insight: Impaired/Impaired

delusional
thoughts

EXIBIT page 19

Mar 17 2008 4:22PM Maxann Shwartz, PH.D.

5058213365

room provided Ramirez family del in jail 5 family friend

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Communication: His speech was pressured and rambling. At times, he was able to comprehend questions but was unable to provide consistent or appropriate responses.

Sleep/Diet: Mr. Ramirez reported "I can't sleep at all...I have physical pain and mental pain...I hear people talking in my head." He indicated that his appetite fluctuates and that he has lost weight since being incarcerated.

Suicidal Ideation, Intent, or Plans: He denied a history of suicidal ideations, intent, plans, or attempts, stating "No, they'll put me in that little room."

Substance Abuse History: Mr. Ramirez acknowledged using illegal drugs and alcohol in the past.

Current Medical/Physical Concerns and Medications: He denied past or present use of medications, including being prescribed psychotropic medications.

Current Mental Health Status: Mr. Ramirez presented with symptoms associated with a significant mental illness, including heightened instability of mood. Specifically, he evidenced a mixture of characteristic signs and symptoms involving a range of cognitive and emotional disturbances that may be associated with the initial onset of a psychotic disorder.

DIAGNOSTIC IMPRESSIONS

RULE OUT-

Axis I: 295.30
295.70
309.81

Schizophrenia, Paranoid Type
Schizoaffective Disorder, Bipolar Type
Posttraumatic Stress Disorder, Chronic

Axis II: 799.9

Diagnosis Deferred

Axis III:

Defer to Physician Report

Axis IV:

Legal Problems

Axis V:

30

CONCLUSION

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male, with no known documented history of mental illness. However, throughout the evaluation, he evidenced a constellation of symptoms characteristic of Schizophrenia, including paranoia, psychoses, loose associations, disorganized thinking, poor reality testing,

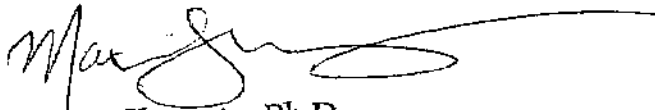
Exhibit 4, 5
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depersonalization, inappropriate mood and affect, and poor judgment, reasoning, and insight. Mr. Ramirez reported numerous times "There's something wrong with my mind." Because of his current mental state, he was unable to complete a formal evaluation.

Based on his current presentation, Mr. Ramirez is not capable of competently proceeding with adjudication and handling the stress associated with the legal process. In his current state, he has been unable to assist his attorneys in his defense as he is unable to communicate in a logical or rational manner. He is also unable to provide any assistance to his attorneys regarding pertinent circumstances or events that led to his arrest in reference to the alleged charges. It is therefore the opinion of this examiner, that Mr. Albert Ramirez is not competent to stand trial.

Thank you for your referral.

Respectfully submitted by:



Maxann Shwartz, Ph.D.
Licensed Psychologist

Mar 17 2008 4:18PM Maxann Schwartz, PH.D.

5058213365

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COURT:Ninth Judicial District Court
Curry County
State of New Mexico**PLACE OF EVALUATION:**Curry County Courthouse
Clovis, New Mexico**Reason for Referral and Charges**

The defendant, Mr. Albert Ramirez, was referred for a Forensic Neuropsychological Evaluation to provide information regarding his current cognitive, psychological, and emotional functioning. Mr. Ramirez' attorneys have expressed concern regarding his competence to stand trial as he has been unable to discuss any aspect of the case with them, despite numerous attempts. They have also described his behavior as bizarre with confused and disorganized thinking. His overall functioning will be evaluated in terms of his competency to stand trial. Mr. Ramirez has been charged with Murder (Open Count) and Tampering with Evidence (2 counts), for events that occurred on or between July 12, 2007, in Curry County, New Mexico. Mr. Ramirez is incarcerated at the Curry County Detention Center (CCDC).

New Mexico Criteria for Determining Competence

- (1) The Client must have a factual understanding of the charges and legal proceedings, (2) The Client must also have a rational understanding of the charges and legal proceedings, and (3) The Client must have the ability to assist his or her attorney (State vs. Rotherham, 1996).

Note:

The following report and opinions are based on information made available to the psychologist at the time of the evaluation. Unless specifically noted, there has not been a systematic effort made to substantiate the full accuracy of all of the information provided in this report. The report is based on the assumption that the information provided is reasonably accurate, unless noted to the contrary. The psychologist reserves the right to modify opinions or conclusions, if additional information relevant to the findings is provided at a later date.

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Disclosure of Limits of Confidentiality and Informed Consent

Prior to the initiation of the forensic evaluation, Mr. Albert Ramirez was informed of the purpose of the evaluation, about my role as a forensic psychologist, that his participation was voluntary, and that the information that he provided in the evaluation may not be confidential. The defendant was unable to communicate that he understood the purpose of the evaluation and that he was going to undergo a forensic evaluation. He was then informed that information from the evaluation would be provided to the Court regarding his current cognitive and intellectual capabilities and that the information he provided was not confidential. The defendant consented to proceed with the evaluation by signing the "Statement of Rights and Limits of Confidentiality" disclosure form, which was explained to him and outlines the purpose of the evaluation.

Mr. Ramirez was informed that he has the right to refuse to participate in the evaluation or answer specific questions, and the fact that in addition to his attorneys, the report and/or information may be disclosed to the Court and/or the prosecution trial attorneys. He was also informed that the psychologist may also be asked to testify with regards to information gathered in the evaluation. The defendant attempted to participate in a structured clinical interview, but was unable to complete the interview or participate in neuropsychological and psychological tests and questionnaires, or complete a competency test due to his current psychological and emotional state. As a result, the testing session lasted a total of 3.0 hours. The evaluation was conducted in an adequate environment and the results are believed to represent a valid measure of the defendant's current cognitive and emotional functioning and status.

SOURCES OF INFORMATION:

- (4)
1. Clinical interview with Mr. Albert Ramirez (defendant)
 2. Interviews with Brett Carter and Chandler Blair (attorneys for defendant)
 3. Request For Expert Witness/Investigator
 4. Clovis Police Department
 - a. Investigative Report: Randy Pitcock, Detective; 7/12/07
 - b. State of New Mexico Uniform Incident Report; 7/12/07
 - c. State of New Mexico Supplemental Report; 7/13/07
 - d. Supplemental Report Narrative; 7/23/07
 - e. Supplemental Report: Homicide; 7/12/07
 - f. Supplemental Report: Officer Antonio Bosque; 7/13/07
 - g. Felony Case File- Ivan Vasquez (exhibit 9)
 - h. Criminal Trespass Notification (exhibit 10p)
 - i. State of New Mexico Uniform Incident Report; 6/21/07; (exhibit 10q)

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consists of five scales, i.e., Psychosis; Neurologic Impairment; Amnestic Disorders; Low Intelligence; and Affective Disorders. The total score on this measure is identified as being the most useful for differentiating exaggerated from non-exaggerated symptoms. SIMS total scores equal to or greater than fourteen are suggestive of symptom exaggeration. Mr. Ramirez's score on this measure was 47.

9 Additional review of the SIMS scale scores is notable for elevation. Specifically, his scores suggest an endorsement on all five scales with the highest elevations being on the Neurologic impairments and the Amnestic disorders scales. He also over endorsed the Psychosis as well as the Affective functioning scales. The lowest elevation was found on the Low Intelligence scale.

This pattern of responses provides evidence of Mr. Ramirez's tendency to exaggerate a range of cognitive and psychiatric symptoms. Mr. Ramirez has reported to this examiner that he does not want to return to the Detention Center as he describes his previous behavior in Detention as "not good...crying, screaming, yelling, kicking walls I was angry 'cos they wouldn't give me my meds".

CASE FORMULATION

Mr Ramirez is a 19 year old Hispanic male admitted to the Forensic Division of the New Mexico Behavioral Health Institute at Las Vegas (NMBHI) on 5th June 2008. A Court finding of incompetence to stand trial, and subsequent commitment for treatment to attain competency to proceed in a criminal case was approved on 17th April 2008. Mr. Ramirez is currently charged with one open count of Murder in the first degree, and two counts of Tampering with Evidence for events that allegedly occurred on July 12th 2007.

Mr Ramirez appears to have had a disrupted childhood, despite his assertion that his mother was raising him well the fact that he was in two foster placements suggests that he was demonstrating difficult to manage behaviors. This was confirmed by Mrs Ramirez. Mr Ramirez also attended special education and became involved with the criminal justice system at an early age prior to 16. His behavior appears to have spiraled downwards to the point where he is alleged to have committed first degree murder. Mr Ramirez has reported sexual and physical abuse however given his tendency for over reporting and his clear need to externalize blame for his actions on others it is difficult to ascertain the validity of this reported abuse. Mr Ramirez mother stated that her boyfriend (the victim on the alleged offence) had never abused Mr Ramirez and that he was jealous of her boyfriend.

Mr Ramirez demonstrates difficult to manage behaviors however in this examiner's opinion these are the result of his personality style rather than as a consequence of mental illness. He does demonstrate difficulties in managing his mood and controlling his impulsive behavior but as previously stated in my clinical opinion this is the result of his personality style and an inability to take responsibility and consider the consequences of his actions.

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Mrs Ramirez reported that she put Mr Ramirez out of her home as a result of him b violent manner and smashing windows in her car and house. She also reported that was verbally abusive toward her and this has been confirmed by staff at this facil heard Mr Ramirez being verbally abusive toward his mother over the telephone. reported that she had a restraining order in place against Mr Ramirez following her car windows and that he violated this order both on the day of the instant off day before. She also reported that Mr Ramirez was jealous of her boyfriend.

MEDICAL HISTORY

Mr Ramirez also provides a highly convoluted and unbelievable story of his arms being permanently damaged as a result of having to drive a car with manual transmission all day. He will attempt to present evidence of his physical impairment by showing the examiner his arm, which has no physical defects. He also has a story of walking on crutches and having his knee bandaged in a manner that no medical facility would ever sanction. He was examined by the medical physician back in County Detention in Curry where he made repeated daily efforts to get medical attention until the physicians refused to grant further medical evaluations. He has also been examined by the medical physician at this facility and despite continuous complaints of chronic pain and stating he is hunch backed, he has no acute or chronic medical concerns.

SUBSTANCE ABUSE HISTORY

Mr Ramirez reported that he has smoked Marijuana and that his prior criminal history has been associated with smoking marijuana. He has endorsed using cocaine, crack cocaine and methamphetamines in the past. In addition the police officers reported that they could smell alcohol on his breath at the time of arrest for prior offences.

ABUSE HISTORY

Mr Ramirez has reported physical abuse at the hands of his foster father and sexual abuse by his mother's boyfriend and a neighbor. However, it is notable that he reports that his mothers boyfriend (the victim in the alleged offense) and the neighbor were gay and that they were lovers which is why they abused him. Given that the neighbor is also a witness to the alleged offences however, it is this examiners opinion that this report of abuse and the sexual orientation of these two men is highly suspect.

CRIMINAL HISTORY

Mr Ramirez reports that his only prior criminal history has been in relation to smoking Marijuana and he alleges that one of these charges was an accident as he did not know the cigarette contained marijuana. This examiner did not have access to an NCIC or his Juvenile record however a police report relating to a prior arrest includes the charges of Larceny (under \$250.00, Evading a Peace Officer and Possession of Marijuana.

PSYCHIATRIC HISTORY

There is no indication from Mr Ramirez's records that he has ever required inpatient or out patient psychiatric intervention. He reports that he did see a counselor and this was related to "anger management" however, there is no evidence of any prior mental illness despite Mr Ramirez reporting a history of depression and anxiety and stating that he was on seven

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Based on the facts in the record, Defendant sensibly does not claim he suffered prejudice from this asserted deficiency in Mr. Cosby's performance. Considering Defendant's history of refusing to cooperate in evaluations, there can be no confidence he would have cooperated even if Mr. Cosby had arranged an emergency evaluation. And, considering the trial court's first-hand observations of Defendant's behavior and dilatory conduct over the course of six years, there is no assurance the trial court would have found Defendant incompetent even if an evaluation concluded otherwise.

Second, Defendant claims Mr. Cosby was deficient because his failure to arrange for expert testimony precluded Defendant from relying on mental illness or lack of capacity defenses. [BIC 37-38] At the same time, Defendant effectively concedes Mr. Cosby's performance was not deficient in this regard by acknowledging the prosecution was prepared to offer rebuttal expert testimony to the effect that Defendant was feigning mental illness and cognitive deficiencies.

[Supp. CD, 3:51:50 to 3:52:12, 3:57:00 to 3:57:33, 4:01:06 to 4:01:24, 4:08:54

to 4:09:13] This indicates Mr. Cosby's decisions may have represented "a plausible, rational strategy or tactic," which is the antithesis of incompetent performance.

This specific claim of deficient performance also lacks support in the record, because Defendant repeatedly refused to cooperate in evaluations that *might* have

23 I counted - MIS. AB.
BUTASS 1122 I claim v. B. t. 4.5
comply.

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EXHIBIT 4, S

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1 competent to make the choice whether or not he should testify. The court advised
2 Defendant of his right. Defendant stated that he was mentally imbalanced and he
3 wanted the jury to be told about his medical problems. The court found that the
4 concerns represented personal issues not rising to the level of incompetence and
5 denied the motion.

6 (24) Rule 5-602(B)(2)(b) requires that “[i]f the issue of the defendant’s competency
7 to stand trial is raised *during trial*, the trial jury shall be instructed on the issue.”
8 (emphasis added). The reasonable doubt requirement “is implied” under Rule
9 5-602(B)(2)(b) when the issue of competency is reraised at trial. *Rael*,
10 2008-NMCA-067, ¶ 22 (“[I]f a requirement of reasonable doubt were not read into
11 Rule 5-602(B)(2)(b), any defendant would be able to raise the issue of competency
12 and have the jury decide it even in the absence of the slightest bit of evidence that the
13 defendant was incompetent. Such a result would be contrary to our well-established
14 guidelines regarding the interpretation of Supreme Court rules.”). However, in the
15 absence of reasonable doubt, the district court need not submit the issue to the jury.
16 See *id.* ¶¶ 22–23, 25. As such, assertions as to the question of incompetency must be
17 properly substantiated to show reasonable doubt. See *Flores*, 2005-NMCA-135, ¶ 29
18 (“[A] court may consider defense counsel’s observations and opinions, but that those

EXHIBIT 13 4, S

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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EXHIBIT # 10

Time	Speaker	Note
9:57:26 AM	CHANDLER	CLOSING ARGUMENT
10:10:27 AM	CHANDLER	CONTINUES CLOSING ARGUMENT
10:45:29 AM		CONTINUES CLOSING ARGUMENT
10:46:27 AM	COSBY	CLOSING ARGUMENT
10:58:56 AM		CONTINUES CLOSING ARGUMENT
11:30:00 AM	CHANDLER	BRIEF REBUTTAL
11:39:16 AM		CONTINUES BRIEF REBUTTAL
11:40:01 AM	COURT	READS INSTRUCTION 19 BEFORE DELIBERATION IS BEGUN
11:41:14 AM	COURT	ANNOUNCES ALTERNATES
11:42:36 AM		JURY EXCUSED TO BEGIN DELIBERATION AND ALTERNATES EXCUSED
11:43:09 AM	DFT	DFT WANTS TO SAY SOMETHING
11:44:05 AM	COURT	YOU CANNOT SAY ANYTHING
11:44:13 AM	OFF RECORD	
3:03:40 PM		JURY SEATED IN BOX
3:04:08 PM	COURT	READS THE VERDICT GUILTY COUNT 1 1ST DEGREE MURDER
3:04:45 PM		GUILTY COUNT 2 TAMPERING WITH EVIDENCE
3:04:58 PM		GUILTY COUNT 3 TAMPERING WITH EVIDENCE
3:05:14 PM	COURT	DFT WISHES TO HAVE THE JURY POLLED, JURY POLLED BY NUMBER
3:06:35 PM	COURT	READS FINAL INSTRUCTION TO JURY BEFORE EXCUSED
3:07:13 PM		JURY EXCUSED FROM SERVICE
3:07:51 PM	CHANDLER	STATES REQUESTS TO MOVE INTO SENTENCING
3:08:07 PM	COSBY	ASKS FOR A 60 DAY EVALUATION
3:08:21 PM	CHANDLER	THIS SENTENCE IS A LIFE PLUS SIX YEARS
3:09:02 PM	COURT	IT IS MANDATORY TO LIFE
3:09:15 PM	COSBY	HE HAS A RIGHT TO AN ALLUCITION
3:09:40 PM	COURT	WE WILL SENTENCE AFTER PRESENTENCE REPORT
3:09:59 PM	COSBY	REQUESTING A 60 DAY EVALUATION
3:10:16 PM	COURT	ORDER THE PRE SENTENCE REPORT ,
3:10:31 PM	RECESS	

EXHIBIT 6 TRIED to ALBERT COURT OF
CONFLICT OF INTEREST BETWEEN
Counsel and I, and ANOTHER
I WAS AMPLIFIED.

10/11/2013

Record

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Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 1988
SSN: [REDACTED] 793

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Date: 04/17/2007 12:15
Provider: KIRAN SHARMA MD

Musculoskeletal system:

General/bilateral: ° Musculoskeletal system: normal

Knee:

General/bilateral: • Knees showed abnormalities ° No tenderness on palpation of the knee ° No pain was elicited by motion of the knee ° Knees demonstrated normal movement ° Knees demonstrated no muscle weakness

Right knee: • Examined

Left knee: • Examined

ASSESSMENT

Bilateral knee pains

PLAN

KIRAN SHARMA MD ordered

• Urinalysis and urine drug screen

• CBC

• A comprehensive metabolic panel

• Serum TSH level

• An X-ray of both knees

• Consultation with a physical therapist

Refer to MHR for counselling and further evaluation

trying to call mom to find out more about pts mental health, unable to reach her

I was Injured

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/17/2007 14:36

Ex-B.A. 7.

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Page 2

Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 1988
SSN: [REDACTED] 7793

Date: 04/24/2007 11:30
Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG:tid, Qty:21, Days:7, Refills:0
Lexapro 10 MG TABS, SIG:qd, Qty:30, Days:30, Refills:2
Refer to unim orthopaedics
pt has anger issues and is somatising
detailed discussion with brother about pts visits
otc knee brace, pt needs pshychiatric help
refer to MHR, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

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Exhibit 7

Exhibit 7

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:06:50 PM		AWARE OF BROTHER BEING PLACED IN FOSTERCARE
3:07:31 PM		GIVING STATEMENT TO DETECTIVE ON JULY 12TH THE DAY OF SHOOTING
3:08:35 PM		TOLD MEMBERS OF JURY NEVER SAW HIM ACT OUT, HE WOULD GET UPSET
3:09:22 PM		DOES NOT REMEMBER WHAT SHE TOLD DETECTIVE, NOW SHE REMEMBERS WHAT SHE TOLD DAVID LOERA
3:11:35 PM		CONTINUES TO REFER TO STATEMENT SHE MADE
3:12:59 PM		BENCH CONFERENCE
3:13:50 PM	CHANDLER	CONTINUES TO REFER TO HER STATEMENT
3:14:33 PM		GO BACK TO THE PHONE CALL, HE WAS MAD AT YOU THE DAY BEFORE THE SHOOTING, "WHAT IS WRONG WITH BEING MAD EVERYBODY GETS UPSET"
3:15:09 PM		I DID NOT KNOW HE WAS TRYING TO GET A GUN
3:16:00 PM		REFERS TO HER STATEMENT
3:16:06 PM	COSBY	PAGE AND LINE PLEASE
3:16:20 PM		NO I DID NOT KNOW, EVERYBODY KNEW NOT TO GIVE HIM A GUN
3:16:55 PM		TRAINING, EDUCATION AND EXPERIENCE
3:17:05 PM		YOU WANTED TO KNOW WHY HE DID THAT WHEN HE CALLED FROM JAIL, NOBODY WAS THERE WHEN IT HAPPENED
3:18:13 PM		YOU DO NOT KNOW WHAT HAPPENED AT 512 W. 6TH, "I WAS NOT THERE"
3:19:18 PM		YOU HAVE BEEN TALKING TO HIM EVERY NIGHT
3:19:42 PM		BENCH CONFERENCE
3:20:41 PM	COSBY	RDEX - ABOUT YOUR STATEMENT ABOUT WHAT YOU ARE SAYING YOU WERE TELLING YOUR BROTHER TO APOLOGIZE TO YOUR MAMA
3:21:58 PM		NOT SURE WHY HE WAS WEARING CRUTCHES
3:22:30 PM	CHANDLER	SPECULATION OBJECTION
3:22:40 PM	COSBY	RESPONSE ABOUT WHO GAVE HIM THE GUN "HE WAS HAVING ISSUES ABOUT HE THOUGHT SOMEBODY WAS AFTER HIM"
3:24:25 PM		SHE ALREADY KNEW ABOUT SHOOTING BECAUSE HER MOM CALLED HIM
3:24:37 PM		SHE BARELY TALKED TO ELADIO, NEVER CLAIMED HIM AS STEP FATHER
3:24:59 PM	CHANDLER	RXEX - YOUR CONCERN WAS ABOUT ALBERT'S STATE OF MIND
3:25:49 PM	COSBY	OBJECTION

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Exhibit 7

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:36 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX. 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE GROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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Exhibit 7

Exhibit 8

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1 its discretion in denying a mistrial.

2 **D. Defendant was not prejudiced by the jury seeing his leg restraints**

3 {39} Defendant's fourth issue is that he was prejudiced when the jury saw his leg
4 restraints when he stumbled as he stood up at one point during the first day of trial.
5 However, he concedes that he did not ask the court to make a finding of prejudice or
6 declare a mistrial and asks this Court to review the possibility that the jury saw his leg
7 restraints for fundamental error. The State argues that the factual record does not
8 support Defendant's contention that the jury saw him shackled because all the parties
9 agreed that the table skirt blocked the jury's view.

10 {40} "To preserve a question for review it must appear that a ruling or decision by
11 the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not
12 properly preserved, we consider the claim under the fundamental error exception to
13 the preservation rule. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M. 513,
14 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant
15 handcuffed for fundamental error because the defendant did not request a mistrial, did
16 not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*,
17 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2)
18 NMRA).

Exhibit 8

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for his expert's presence if sur-rebuttal was allowed. [Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent [See Supp. CD, 3:51:56 to 3:52:00], the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. [CD 10-10-13, 4:34:39 to 4:36:02] When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. [CD 10-10-13, 4:36:02 to 4:39:12] Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. [CD 10-10-13, 4:41:38 to 4:42:15]

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. [CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. [CD 10-11-13, 11:45:13 to 3:06:20]

EXHIBIT 9
NO DEFENSE
at trial

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Exhibit 9

39 pages

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE, <i>What is this?</i>
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THRE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINK, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

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p off

II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland's* two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

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That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about how he had not been properly evaluated and represented, the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial.

[See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

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told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Schwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything..." Mr. Ramirez continued,

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1 observations and opinions alone cannot trigger reasonable doubt about the defendant's
2 competency.").

3 {25} Here, defense counsel merely stated his beliefs that Defendant was not capable
4 of assisting in his own defense and that Defendant did not have the capacity to
5 determine whether or not to testify. In response, throughout the trial, the judge did
6 everything within his power, under the rules, to address the Defendant's concerns with
7 his physical condition and his inability to understand the proceedings, allowing a
8 nurse to examine him during the trial and consistently explaining to the Defendant
9 what was happening. Accordingly, the district court did not abuse its discretion in
10 denying Defendant's request for a forensic evaluation during trial because relying
11 only upon his own observations, defense counsel failed to substantiate his assertions.

12 {26} Further, had the district court found reasonable doubt as to Defendant's
13 competency to stand trial, Defendant would not have been entitled to a competency
14 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
15 only recourse is to request a jury instruction on the issue of competency. See Rule 5-
16 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
17 on competency to the court or objecting to the instructions as offered. See *State v.*
18 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 ("Defendant did not

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forestall testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. **[RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]**

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question



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(citation omitted). “Generally, only an evidentiary hearing can provide a court with sufficient information to make an informed determination about the effectiveness of counsel.” *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 (“A record on appeal that provides a basis for remanding to the trial court for an evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims are heard on petition for writ of habeas corpus . . .”); *State v. Telles*, 1999-NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the “proper avenue of relief [from ineffective assistance of counsel] is a post-conviction proceeding that can develop a proper record”).

{32} Though the district court repeatedly observed that defense counsel was providing excellent representation to Defendant, the court did not hold an evidentiary hearing. Therefore, the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant’s ability to bring such a claim via habeas corpus proceedings.

C. The district court did not abuse its discretion denying a mistrial based on Deputy Loomis’ commentary on Defendant’s silence

{33} Defendant’s third issue is that the court erred in denying his motion for a mistrial based on an alleged improper comment about Defendant’s silence after he had

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMNTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION, IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE, THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

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relates that "for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders..." and that "[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder." Peter Tyrer, Ruger Mulder, et al, "Personality disorder: a new global perspective," World Psychiatry, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/>.

The two cases, *Flores* and Mr. Ramirez's, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez's need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

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Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury "shall be instructed on the issue." In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel's assertion. "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required..." *Drope*, 420 U.S. 162, 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181.

Mr. Ramirez's case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

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deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13,122 N.M. 246. "Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury." *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. [10-10-13 CD B 2:07:30-2:41:36]

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was "not fair" because he wasn't being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. [10-10-13 CD B 10:40:41-10:58:56] The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. [10-10-13 CD B 3:45:47-3:46:20]

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. "The issue of a defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings."

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1 representation, motions he wanted filed, and other issues he indicated that he would
2 present in his appeal.

3 {29} Defendant then demanded to be the first defense witness so he could
4 communicate his defense. During his direct examination, Defendant refused to
5 answer many questions directly saying he wanted to "explain everything." Defendant
6 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
7 the Defendant and recess the trial. Later, after the parties rested, Defendant had
8 another outburst, complaining that he had a right to know what the jury instructions
9 would be so that he could file motions. The court told Defendant that he was being
10 well-represented and the instructions were fair.

11 {30} At Defendant's sentencing hearing, Defendant complained to the court that his
12 defense counsel had failed to effectively represent him and that he did not receive a
13 fair trial. Defendant argued that the jury would not have convicted him had it fully
14 understood that he was the victim. The district court assured Defendant that he had
15 received excellent representation and pronounced the sentence.

16 {31} "This Court has repeatedly stated that ineffective assistance of counsel claims
17 are best served through habeas corpus proceedings so that an evidentiary hearing can
18 take place on the record." *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949

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1 competency by Dr. Fink in January 2013, Defendant spoke directly to the court,
2 though he was represented by counsel, and asked for a fifth forensic evaluation to
3 determine his competency. Defendant argued that a new evaluation would show he
4 was suffering from "psychosomatic delusions and hallucinations and severe
5 depression and anxiety." The judge listened to Defendant's request and then denied
6 it.

7 {17} This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124
8 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported
9 declaration against competency made prior to trial rose to the level of reasonable
10 doubt. In that case, just before trial, the defendant's counsel asked the court to find
11 that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant's
12 counsel cited her own experience with the defendant as the basis of the request, stating
13 her belief that his condition had deteriorated because he had been held in isolation
14 since the competency hearing. *See id.* ¶ 8. The Court held that while "a court may
15 consider defense counsel's observations and opinions . . . those observations and
16 opinions alone cannot trigger reasonable doubt about the defendant's competency."
17 *Id.* ¶ 29. The Court also concluded that the testimony of experts is not required to
18 support a contention of incompetency, but "[i]nstead, a defendant could offer an

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1 offer an instruction on competence, nor did he object to the instructions given the jury.
2 Therefore, this issue was not properly preserved for appeal.”).

3 **B. Defendant did not receive ineffective assistance of counsel**

4 (27) Defendant’s second argument is that he was denied effective assistance of
5 counsel because defense counsel “lacked the necessary assistance of [Defendant]
6 himself”; failed to “seek the assistance of necessary experts,” and if more money was
7 required to seek such assistance on an urgent basis counsel should have requested it”
8 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
9 motions to determine competency, resulting in prejudice to Defendant. Counsel has
10 abandoned the claims that trial counsel failed to call other witnesses or made promises
11 to the Defendant because these claims are unsupported by the record. As such, we
12 decline to review these claims.

13 (28) One week prior to trial, the district court denied Defendant’s motion to appoint
14 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
15 counsel informed the court of his decision not to call a witness on the record, as it was
16 against Defendant’s wishes. Defendant then addressed the court, against counsel’s
17 advice, about how his defense had been limited, how his mental illnesses affected him,
18 the amount of media his case was receiving, the quality of his attorney’s

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interview witnesses and other persons.

Contact was made with the 911 caller, Grace Finkey, who witnessed the incident, recognized the shooter, and contacted law enforcement. The victim, Eladio Robledo Valdez was pronounced deceased while at PRMC. According to the mother of the suspect, Albert has a large blue car, containing all his personal belongings. The vehicle was broken down in front of 511 E. 6th Street. Officers responded to the residence and observed the silver blue Cadillac parked on the street in front of the duplex. The vehicle contains a large amount of clothing and other personal items, possibly belonging to Albert Ramirez. The duplex at 511 E. 6th Street is currently vacant. The front window, facing north is open and raised approximately 8". The front and back doors are locked. The window on the east side of the building is unlocked with the screen removed. There are handprints on the exterior of the glass indicating that the window was pushed up to open the window. There are two cinderblocks under the window to provide easy entry into the window. The suspect, Albert Ramirez may be hiding within the vacant duplex to avoid detection and apprehension by law enforcement. Based on this I believe that evidence relevant to the shooting may be within the residence or the vehicle described, and located at 511 E. 6th Street, Clovis, Curry County, New Mexico.

Affiant is a full-time salaried, sworn Law Enforcement Officer currently employed with the Clovis Police Department. Affiant's current assignment is Detective with the Special Operations Unit, and member of the Major Crimes Unit.

SUBSCRIBED AND SWORN TO BEFORE ME IN THE ABOVE NAMED COUNTY OF THE STATE OF NEW MEXICO,

THIS 12 DAY OF July, 2007.

Robert S. Orisk
JUDGE

District Judge
TITLE

Robert S. Orisk
AFFIANT

Detective #98
TITLE

APPROVED BY ASSISTANT DISTRICT ATTORNEY Matth Chancell ON July 12, 2007

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EXHIBIT II

EXHIBIT (12)

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*Wrote
on page 9
Hunt*

EV 314 11,

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**STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT**

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,

D.O.B. [REDACTED] '88

SSN: [REDACTED] 7793,

Dianna Hunt
CLERK DISTRICT COURT

D-0905- SW 0200 7 00 001

[REDACTED]
and a silver blue Cadillac 4-door bearing Texas license W55HHS

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being dully sworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, stenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED] '88, Social Security Number [REDACTED] 7793, Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

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RETURN AND INVENTORY

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

STATE OF NEW MEXICO

-VS-

2007 JUL 13 PM 3: 30

Albert Ramirez,
D.O.B. [REDACTED] 38
SSN: [REDACTED] 7793,
[REDACTED]

D-0905

Subscribed and sworn to
CLERK DISTRICT COURT

and a silver blue Cadillac 4-door bearing Texas license W55HHS

I received the attached Search Warrant on 07/12/07 And executed it on 07/12/07
at 2235 Hours. I searched the person or premises described in the Warrant and left a copy of the Warrant with:

None present at scene
(name of the person searched or owner at the place of search)

Together with a copy of the inventory for the items seized. The following is an inventory of the property taken pursuant to the Warrant:

- 1 photo of suspect and unknown black male (Gang Writings)
- 1 paper with writing about shooting people
- 1 letter to Albert Ramirez denying his SSI benefits

This inventory was made in the presence of

Ricky M. Smith
Applicant for Search Warrant

and

Randy Pitcock
Owner or other witness

[Signature]
Signature of Officer or Detective

Randy Pitcock
Signature of Owner or Witness

Return made this _____ day of _____, 2007 at _____ hours.

(Judge Clerk)

After a careful search, I could not find at the place, or on the person described, the property described in this Warrant.

(Officer)

(Date)

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

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Free Eviction Notice Form

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JAN 10, 2014

Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fornoff
CMT Projects Editor
rfornoff@cnjonline.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Eladio Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 18, waited outside the home the morning of July 12, 2007, with a loaded .22 caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head execution style.

Chandler called the killing "premeditated... calculated... and cold blooded." He noted a pre-sentence report branded Ramirez a malingeringer who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good kid," Israel Ramirez told Hartley. "If I could switch places with him I would."



CNJ staff photo: Robin Fornoff
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Eladio Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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Police arrest shooting suspect - Clovis News Journal

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July 16, 2007

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson: Freedom Newspapers

A tip from a citizen led to the arrest of a Clovis teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W. 13th St. around 8:30 a.m. Sunday morning, a press release from Clovis police said.

He is accused of shooting Eladio Rubledo, 39, multiple times in the front yard of 512 W. 6th St., a residence Rubledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Curry County Adult Detention Center on \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Rubledo laying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Rubledo with his hands outstretched toward the victim as if he was holding a gun and then two more shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Rubledo, who was bleeding from the head and unresponsive, the affidavit said.

Rubledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Rubledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Networks program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

calls to Debra Ramirez seeking comment were not returned Monday.

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Homicide suspect ruled competent enough to stand trial - Clovis News Journal

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EXHIBIT 13
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SEP 17, 2008

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Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnson: CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Teddy Hartley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disturbed young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and talked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez' mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Debra Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez' criminal case had been put on hold pending the outcome of the evaluations.

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trial

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Accused killer takes witness stand - Clovis News Journal

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HOME NEWS SPORTS COMMUNITIES BLOGS CLASSIFIEDS JUST TV SERVICES AUTOMOTIVE

JUNE 13, 2011

Accused killer takes witness stand

October 10, 2013

By Robin Fornoff

CMI PROJECTS EDITOR

rfornoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.



Albert Ramirez
On trial for murder

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on west Sixth Street for work.

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.

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Teen charged with murder has competency issues - Clovis News Journal

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Teen charged with murder has competency issues

July 16, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Sharna Johnson; CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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Page 56

Form CD-180108.1
Revised 06/16/14

NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

- I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
- I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
- I understand that there are limitations to treatment.
- I understand that there are potential adverse outcomes to treatment.
- I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
- I understand that my treatment sessions will address my treatment goals.
- I will complete assigned treatment homework (if any is assigned by my clinician).
- Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)*69597 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature DateBeatrice Narcisco, PhD, LPCC
Clinician (Printed/Typed Name)B. Narcisco, PhD, LPCC 8/30/16
Clinician Signature DateEileen R. Missall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)[Signature] 8/30/16
Reviewer Signature DateInmate Name: Ramirez, AlbertoNMCD#: 69597

Treatment Plan

Facility: CNMCF/MHTC

Form CD-180108.1 (Rev. 06/16/14)

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Las Cruces, NM 88004

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Clayton, NM 88415

Name _____

No. _____

Unit _____

Date: _____

IF NOT FOR TRIAL COUNSELLS
INEFFECTIVE ASSISTANCE OF
COUNSELLS MR. RAMIREZ WOULD
OF HAD A STRONGER CASE
GOING INTO TRIAL. MR RAMIREZ
WAS PREJUDICED BY COUNSELLS LACK
OF ASSISTANCE OF COUNSEL
I WOULD PAY FOR AN ATTORNEY
IF I HAD THE MONEY.
EVEN AT SENTENCING COUNSEL
FAILED TO PROVIDE EFFECTIVE
ASSISTANCE IVE BEEN DENIED
A FAIR TRIAL ALL AROUND.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

STATE OF NEW MEXICO
COUNTY OF CURRY
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West's New Mexico Statutes Annotated

JUL 17 2017

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

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Clerk District Court

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT FROM
DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO RAMIREZ

Defendant-Petitioner,

S.Ct. No.

D-905-CR-2007
000024

(leave blank; court will assign)

vs.

WILSON FLORES

District Ct. No. _____

(Name of Warden)

Respondent.

EXHIBIT

T

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICOABELTO RAMIREZ

Defendant

Petitioner pro se

(address information)

P.O. Box 1059 SANTA FE, NM 87504PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ABELTO RAMIREZWALTER JIMAN RAMIREZ

(your name v. Warden's name), District Court No. _____

filed on

JUL 2nd 2017D-0905 CE. 2007-00424

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

NOT INQUIRING INTO REASON AS TO
WHY INMATE ABELTO RAMIREZ FIRED HIS
ATTORNEY IN MIDDLE OF TRIAL AND
ASK TO REPRESENT HIMSELF.

WHY NOT ALSO IF THE COURT
FIRED IN NOT GRANTING

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

ASSISTANCE OF COUNSEL FROM
 public defender post conviction
 office to assist in habeas
 proceeding and city not grant
 the court's hearing to determine
 if allegations are true and if not
 deserves a new trial with new
 counsel.

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

Homicide 1st degree murder 1 life
 21 tampering with evidence 2 yrs
 each 3rd degree.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

d-cas. cr-2007-00454

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NMI R CR Form 9-702

3. Tell the story of what happened in your court case:

Got into an Argument and Fought
and my mom's boy friend died
I WAS high on MARIJUANA, mentally
ill, drunk on alcohol, and my trial
lawyer told me not to say I was drunk
I WAS ALSO told I was a little bitch and
threatened by counsel to not help me
because I'd not take plea as he wanted He
was not in my best interest He did not
want to go to trial. I did It was not
premeditated

**BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT
COURT**

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position.
Use plain language.)

POINT 1:

Ineffective assistance at trial and

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

ON APPEAL / SIXTH AMENDMENT VIOLATION
 But that for COUNSEL'S IMPROPER CONDUCT
 ERRORS, the result of the proceedings
 would have been different. CONFLICT OF
 INTEREST IRRECONCILABLE, BEFORE TRIAL
 AND AFTER I FIGHT HIM IN COURT

POINT 2:

COUNSEL told me I was A Stupid
 little bitch, and if I keep insisting to
 go to trial He would not provide
 effective assistance. To either plead
 guilty or go to trial with
 ineffective assistance. CASE.

Daniel Gusman FROER V. United States CIR
 AS 18 F.3d 778, 9M Cir 1999

POINT 3:

Date ~~at~~ Shell VS. Larry White charged

bill locker cite 218 F.3d 1017 9M Cir 2000

Louison V. ~~re~~ minutes cite AS 761. F.2d 275
 1985

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

Appellate counsel ineffective Failing
to argue to Secretary and I asked
lawyer in record to call all names
Sweets and she was NOT called for refusal
to call witness EXTRA INFO on other sheets
(Attach additional sheets, if necessary.)
She would not testified I was sexually abused
by victim Rocio I am mentally ill lack of
capacity insanity defense

REQUEST FOR RELIEF

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) TO grant assistance of post conviction
public defender assistance

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

According to my best

my habeas corpus ON
MARCH 24TH 2017
APRIL 25TH 2017
was lost by
PRISON OFFICIALS
MOVED to me to
NEW with sig with
my fault
documents lost

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 27 day of June 2017

Defendant-Petitioner, pro se

Credits

[Adopted effective Dec. 31, 2014.]

NMRA, Form 9-702, NM R CR Form 9-702

State court rules are current with amendments received through July 1, 2015.

End of Document

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I received dismissal
of petition June 5th 2017
It is timely sent

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

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Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT FROM
DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO J. RAMIREZ

Defendant-Petitioner,

S.Ct. No.

D-905-cr-2007-
00434

(leave blank; court will assign)

vs.

WARDEN FRANCO

District Ct. No. _____

(Name of Warden)

Respondent.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICOALBERTO RAMIREZ

Defendant

Petitioner pro se

(address information) P.O. Box 1059 SANTA FE, NM 87501PETITION FOR WRIT OF CERTIORARI TO THE 9th DISTRICT COURT OF NEW
MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ALBERTO RAMIREZ v. WARDEN FRANK GUNAWAN(your name v. Warden's name), District Court No. 9thfiled on JUL 27th 2017D-9th-CR 2007-00434

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

IN NOT INQUIRING INTO REASON
AS TO WHY INMATE ALBERTO RAMIREZ
~~WAS FIRED HIS ATTORNEY~~ FIRED HIS ATTORNEY, IN
MIDDLE OF TRIAL AND REPRESENT
HIMSELF.

WHY NOT. ALSO IF THE COURT
ERRED IN NOT GRANTING →

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

ASSISTANCE OF COUNSEL FROM
PUBLIC DEFENDER POST CONVICTION
OFFICE TO ASSIST IN HABEAS
PROCEEDINGS. AND WHY NOT GRANT
THE EVIDENTIARY HEARING TO
DETERMINE IF ALLEGATIONS ARE TRUE
AND IF MR. RAMIREZ DESERVES A NEW TRIAL
WITH NEW COUNSEL

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

HOMICIDE 1st degree murder life
2/ tampering with evidence 2 yrs each
3rd degree.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction
(please include docket numbers and dates):

D-0905-CR 2007-00434

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

3. Tell the story of what happened in your court case:

GOT into AN argument and ~~beat~~
 Fought And my moms Boy Friend
 died. I WAS high ON MARIJUANA
 DRUNK ON ALCOHOL my trial
 lawyer told me to NOT say I
 WAS drunk. I ALSO WAS
 told I WAS A little brtch And
 threatened by counsel to NOT help me
 Because I d NOT take plea while
 WAS NOT IN MY BEST INTEREST.
 He did NOT want TRIAL. I did. I was

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, ~~Sixth~~, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

INEFFECTIVE ASSISTANCE at trial and

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

ON appeal / Sixth Admendment Violation
 But that For counsels unprofessional
 errors, the result of proceedings would
 OF BEEN different. conflict of
 interest irreconcilable, Before trial
 And after I ~~was~~ fired him ^{of} _{court}

POINT 2:

He told me I was A Stupid little
 Bitch. And IF I keep insisting to
 go to trial He would not provide
 effective assistance. to either plead
 guilty or go to trial with
 INEFFECTIVE ASSISTANCE. ^{cite as 18}
^{F.3d. 778}
^{am. cit. 1994}

SIMILAR(CASE) Daniel Eugene Frazier v. United States
 of America No. 92-55193, argued submitted

POINT 3:

Decided March 10th, 1994.
 Nov. 2, 1993

Wayne Dale Schell v. Larry Wilk Warren Bill Tocher
 March 23, 2000.

Cite as. 218 F.3d 1017. ^{am} _{cir} 2000

Wilson v. Martinez Cite. as 761. F.2d 175
 (1985)

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

also Appellate counsel ineffective. Failing to
argue to Sentencing and I asked lawyer
in record to call de. MAXANE SWARTZ and
She was not called. Flat refusal to call a witness

(Attach additional sheets, if necessary.)

Extra INFO on other sheets
She would of helped show I was sexually abused by victim
and I was mentally ill lack of capacity. insanity
defense

REQUEST FOR RELIEF

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

☒ (W) remand to the district court for a full hearing on the petition, OR

☐ (W) reverse the conviction, OR

☐ (W) remand to the district court to correct the sentence, OR

☒ (W) (other) TO grant assistance of post conviction
public defender assistance.

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

☒ (W) a copy of my petition for writ of habeas corpus filed in district court, AND

☒ (W) a copy of the state's response, if one was filed, AND

☒ (W) a copy of the district court's order.

☒ (W) I have not attached the required documents because

I am trying to do my best.

My habeas on March 24th 2017
was lost by prison officials
moving me to new unit seg
not my fault
documents lost

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 28 day of JUNE.

Defendant-Petitioner, pro se

Credits

[Adopted effective Dec. 31, 2014.]

NMRA, Form 9-702, NM R CR Form 9-702

State court rules are current with amendments received through July 1, 2015.

End of Document

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I received dismissal
of petition JUNE 28th 2017
It's timely. Sent.

MR. Honorable crew tatum

I SENT HUBBARDUS MARCH 14 2017

AND APRIL 25TH 2017 AND

THE OFFICERS EMPLOYED AT PNM

LOST MY COPIES IN A MOVE.

I NEEDED COPIES PLEASE SEND

ME. COPIES. PLEASE AND THANKS

HAPPY FATHERS DAY SIR

THANKS FOR YOUR

TIME GOD BLESS

GOD BLESS

AIRBATO

CAVIER

MOTION
SIR

7.14.17

TO district court
JUDGE DREW TATUM;

HEED. SIR This is
A motion to ASK
for COLLATERAL REVIEW
WITH RESPECT to the
PERTINENT judgement
OR TO properly file
Application for
STATE post
conviction

TAW
page

I ASK the Judge
Court to SEE
my petition I SENT
JUNE 12th 2017.
with All EXIBITS, new
facts, And new
petition, I'm trying
to have my claim
granted my writ
GRANTED.

PLEASE Thank you.

Would the court
write me back and
let me know.

Whats ~~your~~ your
decision & Thank you
Sir God Bless

TO 9th district Court Judge 7.14.17

dear tatum, Sir, may I
please file A motion for
COLLATERAL Review with
The Court 9th district with respect
to the previous judgement And Be
Allowed A new decision based
on new additional facts - And
Exhibits And, start all over
from Begging of Habeas
proceedings Before my time
is done, I have one year
left, well my decision was
dec - 1st, 2016 So I SEE it
as I have 4 1/2 months,

AS long AS the Court clerk will
file my petition, I sent on
1.6.12.17, would you all
please do this for me, I'm
not being allowed to make copies
of petition And I need help
from the court + on this
PLEASE respond SIR.

Lieth
Ramsey
69597

FACTS:

TO: NEW MEXICO SUPREME COURT AND
9TH JUDICIAL DISTRICT COURT, TO FEDERAL
COURT AND TO 10TH CIRCUIT AND UNITED
STATES SUPREME COURT. TO ALL COURTS:

• TO WHOM IT MAY CONCERN.

- I HAVE HAD MY PETITION DISMISSED
BY JUDGE DREW TATUM ON ~~2023~~ DATE
JUNE 5th OF JUNE 6th 2017.
- I IMMEDIATELY SENT ANOTHER PETITION
TO THE COURT 9th district, WITH MOTIONS,
TO AMEND, TO RECONSIDER, AND TO FIX
MY PROBLEM OF NOT PROPERLY PRESENTING
CLAIM. AND IN LIGHT OF ADDITIONAL FACTS,
EXHIBITS, FACTS NOT KNOWN. I HAVE
RECEIVED NO REPLY FROM 9th DISTRICT COURT
- I NOW ASK FOR TOLLING OF MY EXHAUSTED
CLAIMS, DISMISSED CLAIMS, AND I AM
PURSUING STATE COLLATERAL REVIEW ON
UNEXHAUSTED AND DISMISSED CLAIMS.
- I AM PHYSICALLY DISABLED, CHRONIC
HIP PAIN, GRIP, BACK, NECK, SHOULDER
PAIN, ALSO A BROKEN KNUCKLE ON RIGHT
HAND. I AM MENTALLY ILL, PTSD, DEPRESSION,
ANXIETY, AND PSYCHOSOMATIC DELUSION, AND
SCHIZOPHRENIC.
- I AM TRYING TO EXHAUST MY CLAIMS
AND NOT HAVE TO MOVE FORWARD WITH
CLAIM DISMISSED, APPOINTMENT OF COUNSEL
DENIED, "I AM ASKING THAT COUNSEL
BE APPOINTED, AN EVIDENTIARY HEARING,
DISPOSITIONARY, BE GRANTED AND MY
WRIT GRANTED."
- I DON'T WANT TO BE DEVOID REQUESTS, AND
PETITION DISMISSED, I AM NOT PROPERLY
FILING PETITION, I AM NOT RECEIVING AND
BE DENIED LEGAL ACCESS TO LAW LIBRARY AND
BOOKS & FORMS AND COPIES, AND NO
ASSISTANCE AT ALL.

- I'VE tried to grievance the prison law library. But OFFICERS ARE CORRUPTED.
- MATERIAL AND LEGAL ~~errors~~ and FACTUAL BASES on my claim, when I filed writ 3.22.17 4.25.17, I did NOT know what or how to file writ properly. "I did NOT develop my claim as fully AS A PETITIONER, who is represented by counsel, but I do believe, if I had counsel to assist me, I would be entitled to a new trial with new counsel."
- I AM ABSENSE OF legal training and law knowledge. I AM NOT able to properly present my claims on my own, or properly represent myself in habeas proceedings, IT IS TOO COMPLEX.
- I HAVE BEEN TRYING DILIGENTLY TO ALERT the courts, what had happened when I filed my writ 3.22.17 4.25.17, I did NOT have NO PAPER, NO PERS, TO WRITE MORE FACTS, I WAS BEING DENIED law library, BOOKS, COPIES FORMS, NOBODY at facility would make copies and my EXHIBITS, THIS PREVENTED ME FROM PROPERLY FILING my claim on ineffective assistance of counsel + and appellate counsel.
- I tried, AND ASK TO return to the 9th DISTRICT COURT AFTER my petition was DISMISSED, TO LEAVE TO AMEND NEW PETITION, IN LIGHT OF NEW ADDITIONAL FACTS. TO PROPERLY present my claim and my UNEXHAUSTED claims to the district court DOES NOT respond.
- I've tried to ASK FOR tolling of exhausted claims and try to pursue STATE collateral Review on UNEXHAUSTED claims.

- dismissing my petition, and denying my request for counsel would
- This would create a miscarriage of justice by not granting my writ, my request for appointment of counsel, and my request for collateral review to exhaust, unexhausted claims, and to be allowed to properly present claim, on alleged, verbal abuse and threats by counsel.
- FACT my defense counsel has died and I was prejudiced by his performance and having to be represented by force after I fired counsel in trial, and I ask to represent myself. I had continuously objected and expressed my dissatisfaction, and when I ask to speak on record, after I fired my attorney, every time I was denied, there was no inquiry on the issue it was not looked into why I fired my defense counsel. or to represent myself.
- THE CONFLICT DEFENSE COUNSEL AND I had, counsel, it was iric considerable it affected his performance my defense, counsel did not have my best interest at heart. He had his I had my interest. He was angry.
- I WAS DENIED COUNSEL AT CRITICAL STAGE, BY HAVING NO INQUIRY, AND TO BE REPRESENTED BY COUNSEL WHO HAD STATED TO ME, "YOU LITTLE SHUPID BITCH," AND SAID "I HOPE YOU GET LIFE."
- I AM DOING LIFE PLUS 8 YRS OR 6 YRS. I DID NOT KNOW MAXIMUM AND MINIMUM TIME I WAS FACING OR I'D GET IF CONVICTED, COUNSEL WOULD NOT LET ME KNOW, I TRIED TO ASKED TO NO AVAIL.

- I would obtain counsel, IF I had the MEANS Funds the money the ARRESTS. I AM POOR INDIGENT, SO I GET WRONGLY CONVICTED AND DENIED ASSISTANCE OF DEFENSE COUNSEL, APPEAL COUNSEL, AND IN PETITION. "THATS UNFAIR?"
- WHO WOULD NOT OBTAIN COUNSEL. IF IN MY SITUATION, doing life + 6 years, AND the denied, effective assistance in all critical stages, trial, appeal and HABEAS PETITION?
- PLEASE I ASK THE COURTS, TO NOT DISMISS MY CLAIMS, MY PETITION, I ASK THE COURTS TO GRANT MY WRIT, MY REQUEST FOR APPOINTMENT OF COUNSEL, MY MOTIONS, ON, AN EVIDENTIARY HEARING, DISPOSITION, and DISCOVERY AND TRIAL TRANSCRIPT, TO EXPAND THE RECORD, TO AMEND, AND RECONSIDER, TO DO COLLATERAL REVIEW.
- I AM doing my BEST WITH WHAT I HAVE, WITHOUT, LAW LIBRARY. BOOKS, LAW BOOKS, FORMS, COPIES, NO COUNSEL, NO MONEY, NO PAPER AND PENS A T TIMES. PHYSICAL disability, MEDICAL ILLNESS, NO KNOWLEDGE or training in the law., NOT able to amend, to properly present my CLAIMS. or to Resubmit to fix problems.
- I ASK THE COURTS TO AT LEAST ALLOW ME TO FILE all my HABEAS AND WRIT, APPEALS, all the way UP TO THE UNITED STATES SUPREME COURT, and THEN, IF DENIED, I ASK ALL THE COURTS to NOT deny ME, TO FILE A NEW 2nd petition, A NEW post conviction

opportunity to make ~~my~~ my claim on
INEFFECTIVE ASSISTANCE OF COUNSEL.

- I will TRY to obtain COUNSEL to represent
ME in 2nd petition and properly present
FACTS, to prove claim OF INEFFECTIVE
ASSISTANCE OF COUNSEL and appropriate
COUNSEL.

- I BELIEVE the ends OF justice would
otherwise be served by rehearing my
claim.

- IF possible - NOW after dismissed
~~re~~ rehear my claim and, IF NOT,
after I tried all the way. U.S.
Supreme Court.

- THIS IS A MISCARriage OF JUSTICE.

- I AM NOT A lawyer, I have NO
knowledge OF law, So my writ
IS dismissed, all my request
denied, all motions denied, THIS
IS WRONG.

- I appreciate ALL OF your time
God Bless YOU ALL. THE COURTS.
Thank you VERY MUCH.

69597

ALBERT RAMIREZ

P.O. Box 1059

SANTA FE, NM 87505

THIS Statement WAS to
Be added, to my Facts
in my writ, to ALL
THE COURTS.

Please + And Thank you!!!

I AM trying diligently to Show in
my attempt to present writ properly to be
appointed counsel, to exhaust all claims and
dismissed claims granted.

Motion to Expand The Record
to help prove my claim and
future my claim of ineffective
assistance of counsel and appellate
counsel. In light of additional
facts presented to the court June
12th 2017 in petition writ

Motion for discovery to ASSIST IN
Filing petition, facts, and EXHIBITS
to help, prove and further my
claim of ineffective assistance
of counsel and appellate counsel.

In light of additional
facts presented in 2nd amended
petition in June 12th 2017.

Motion For trial transcript
to assist in filing petition,
and appeal, facts, and exhibits
to help prove, and future my
claim of ineffective assistance
of counsel. In light of additional
facts presented to the courts. in
2nd Amended petition, JWE. 17th 2017

Motion for Informal process
to proceed Free of Payment
I AM INDIGENT PRISONER
MOTION For Appointment of
COUNSEL

Motion For discretionary Review
Motion For COLLATERAL Review
to exhaust ^{admitted} ^{claims} ~~unexhausted~~ claims.
and be allowed to properly present
claim of ineffective assistance of
COUNSEL on alleged claim of verbal
abuse + threats made by defense counsel

IN LIGHT OF NEW ADDITIONAL
FACTS presented to the courts
JUNE 12th 2017.

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 JUL 27 PM 2:17

ALBERT JOSE RAMIREZ,

Petitioner,


CLERK DISTRICT COURT

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER
RULE 5-802 NMRA**

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, and the Court being fully advised of the circumstances;

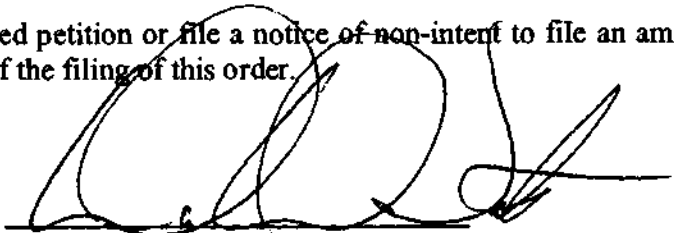
THE COURT FINDS THAT:

☒ The petitioner is incarcerated.

IT IS THEREFORE ORDERED THAT:

☒ The Law Office of the Public Defender is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

☒ Petitioner's counsel shall file an amended petition or file a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.


DREW D. TATUM
District Judge, Division II

EXHIBIT

U

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Court of New Mexico

8/11/2017 10:57:06 AM

Office of the Clerk

August 11, 2017


Joey D. Moya

NO. S-1-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v.

GERMAN FRANCO, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By



Chief Deputy Clerk

EXHIBIT

V

**STATE OF NEW MEXICO
CURRY COUNTY
NINTH JUDICIAL DISTRICT COURT**

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2018 MAY 18 AM 10:04

ALBERT RAMIREZ,

Petitioner,

v.

JAMES MULHERON, warden

Respondent.

D-0905-CR-2007-00434


CLERK DISTRICT COURT

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Albert Ramirez, through his counsel Liane E. Kerr, and pursuant to NMRA Rule 5-802 and Article II, Sections 7, 12, 14, 15 and 18 of the New Mexico Constitution and the Fifth, Sixth and Fourteenth Amendments of the United States Constitution; and respectfully submits this Amended Petition for Writ of Habeas Corpus.

Mr. Ramirez respectfully requests that this Honorable Court issue a Writ of Habeas Corpus and vacate, set aside or correct Mr. Ramirez's sentence and order of confinement in D-905-CR-2007-0434. Mr. Ramirez contends that he was denied his state and federal constitutional right to due process and a fair trial because the cumulative effects prevented him from proving his innocence. The following amendments have been made to the pro se petitions filed on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

- 1. Place of Confinement:** Mr. Ramirez is detained by Warden James Mulheron at the Southern New Mexico Correctional Facility in Dona Ana, NM.
- 2. Nature of Proceedings Resulting in Confinement:** Petitioner was found guilty following a change of plea on the date of his jury trial on January 26, 2009 of two counts of tampering

with evidence and first degree murder in the first degree. Petitioner moved to withdraw his plea and the court denied it; however, the Supreme Court remanded the matter, allowing Petitioner to withdraw his plea. Jury trial was ultimately held on October 10, 2013 and lasted four (4) days, after which Petitioner was found guilty of the murder and tampering charges.

3. Judgment and Sentence Resulting in Current Confinement. Petitioner was sentenced in the Ninth Judicial District Court, Honorable Teddy L. Hartley presiding, on January 8, 2014 to a consecutive sentence on each of the counts: a period of Life on the murder count plus six (6) years for each of the tampering counts in the New Mexico Department of Corrections.

4. Direct Appeal. On February 7, 2014, Petitioner appealed his original conviction to the Supreme Court of New Mexico in *State v. Ramirez*, S. Ct. No. 34,576 and a mandate affirming the trial court was issued on January 18, 2017.

5. Prior Petitions. Petitioner filed a Petition for Writ of Habeas Corpus on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

6. Habeas Representation/Timeliness of Petition: By Order of the Court, the Public Defender, Amanda Stephenson, entered an appearance on August 27, 2017. Ms. Stephenson filed two requests for extension, one on October 23, 2017 and again on January 19, 2018, making the Petition due on or before April 19, 2018. Due to a conflict, the Public Defender's Office recently reassigned the Petitioner's case to Liane E. Kerr, who requested a sixty day extension in order to fully review the case, meet with her client and file the brief. The request was opposed by the State. Consequently, this Petition is filed without fully meeting with Mr. Ramirez.

7. **Relief Requested:** This petition seeks to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.

ISSUES PRESENTED IN THIS PETITION:

- a. Whether Petitioner was denied his sixth amendment right to effective assistance of counsel and compulsory process when his attorney refused to call Dr. Maxann Shwartz to testify at either the competency hearing or at trial?
- b. Whether Petitioner's criminal convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404b?
- c. Whether Petitioner was denied his right to due process when jurors observed him shackled during trial?

STATEMENT OF FACTS/PROCEDURAL HISTORY

A. Procedural History.

Petitioner was indicted on July 20, 2007 and charged with first degree murder and two counts of tampering with evidence. [Exhibit A]. On January 26, 2009, the first day of his jury trial, Mr. Ramirez pled guilty to two counts of tampering with evidence and first degree murder in the first degree, with tampering counts running concurrent to the life sentence.

Mr. Ramirez moved to withdraw his plea on February 25, 2009, a motion the trial court heard on June 25, 2009, but denied on July 29, 2009. Following an appeal of the denial to withdraw plea, the New Mexico Supreme Court reversed the denial on July 6, 2011 and remanded for a trial on the merits which was ultimately held on October 7-11, 2013 where jurors were instructed to find first degree murder. [Exhibit B]. Petitioner was found guilty of first degree murder with the use of a firearm (also verdicts of guilt returned on both tampering counts) [Exhibit C]. Although Petitioner's

plea exposed him to a life sentence only, following trial, Petitioner was sentenced to the life sentence and each tampering count consecutively, earning him an additional six years for a term of life plus six years. [Exhibit D].

1) Facts Regarding Introduction of Prior Bad Acts Evidence

During trial, the State introduced three incidents of bad acts evidence, which Mr. Ramirez maintains was error. Over objection, the State introduced evidence that Mr. Ramirez broke his mother's windshield. [Exhibit E: Transcript, 10/8/13, 4:03:49-4:08:21; pg. 2-3]. Again over objection, the State introduced evidence that the victim's home had been burglarized with the implication that it was Mr. Ramirez who made the entry. [Exhibit E: Transcript, 10/8/13, 4:14:04; 10/11/13, 8:55:26-8:59:31; pg. 2-3].

2) Facts in Support of Prejudice from Shackles Observation

During a break, as jurors were leaving the courtroom, Mr. Ramirez tripped as a result of wearing shackles. He maintained that jurors observed him fall and saw his shackles as a result. [Exhibit F: Transcript, 10/7/13, 3:10:07-3:11:12, pg. 1].

3) Facts Regarding Petitioner's Competency

A notice to determine competency was filed on January 14, 2008 [Exhibit G] and the defendant was evaluated by Dr. Maxann Schwartz and determined incompetent. [Exhibit H]¹. On January 17, 2008, the Defendant was committed to the New Mexico Behavioral Health Institute at Las Vegas (NMBHI) for a period of three months. [Exhibit I]. A hearing was held on September 15,

¹ Although confidential, Mr. Ramirez disclosed Dr. Schwartz' report and provided a copy attached to his pro se Petition for Habeas relief and therefore, any concerns about confidentiality are waived.

2008, where Dr. Burness from NMBHI testified that she believed the Petitioner was malingering. **[Exhibit J; Transcript: 10/9/13 CD B-2:41:40, pg. 19]**. By Order of the Court, Petitioner was deemed competent to stand trial on September 16, 2008. **[Exhibit K: competency hearing pgs. 1-42]**. The record does not reflect that Dr. Shwartz was called to rebut the testimony of Dr. Joanne Burness at the final hearing regarding competency. Following the hearing, the Court entered an Order detemining Mr. Ramirez competent. **[Exhibit L]**. The State then identified Dr. Burness on its witness list and the Defense filed a Motion in Limine to address statements made to Dr. Burness. **[Exhibit M]**.

Following the remand by the Supreme Court on the plea withdrawal issue, another Motion for Mental Evaluation was filed on September 22, 2011 **[Exhibit N]**; an Order was entered and Petitioner was again sent to NMBHI for an evaluation **[Exhibit O]**. In the interim, further forensic evaluation at NMBHI was ordered by the Court **[Exhibit P]**. Subsequently, Mr. Ramirez was deemed competent to stand trial on March 1, 2013. **[Exhibit Q]**.

During trial, the issue of Mr. Ramirez' competency arose repeatedly. During voir dire, the defense attorney informed jurors that there were matters concerning Mr. Ramirez' mental health and then followed up with the court. **[Exhibit R, Transcript: 10/7/13, 12:05; pg. 9]**. The Court noted that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. **[Exhibit S, Transcript: 10/8/13, CD B 8:42:10-8:43:50; pg. 6]**. Mid-trial, Mr. Ramirez issued a rambling statement about his health and said that he heard voices and was concerned his attorney was mad at him. **[Exhibit T, Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58; pg. 13, 15-18]**. Also mid-trial, the Defense reminded the Court of competency issues and alerted the Court that Mr. Ramirez did not understand the proceedings and was incapable

of assisting in his defense. [Exhibit U, Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49, pg. 9-12]. In response, the Court; however, opined that Mr. Ramirez was malingering but noted he had never seen a defendant act the way Mr. Ramirez was acting. [Exhibit V, Transcript: 10/9/13, 10:18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20; pg. 19, 31]. The Defense again asked for a review of competency. [Exhibit W, Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46; pgs. 35, 12]. Mr. Ramirez specifically asked that the jury be told about his medical problems and specifically told the Court that he did not believe the trial to be fair, as the right questions were not being asked and Dr. Shwartz' testimony was necessary to him having a fair trial. [Exhibit X, Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15; pgs. 20-29, 33]. The Defense; however, informed the Court and the State that it would not be submitting a competency instruction. [Exhibit Y, Transcript: 10/10/13, 4:32:27-4:35:41; pgs. 32, 34]. Excerpts only of the relevant issues are provided herein and were transcribed by a certified court reporter. [Exhibit Z].

B. Facts of the Case.

Petitioner, eighteen year old Albert Ramirez, sometimes resided with his mother, Debra Ramirez and step-father, Elado Robledo at their home in Clovis, New Mexico. Some of his belongings remained at the residence when he was ordered to leave the home due to a disruption with his step-father. When Albert Ramirez returned to the home to collect some of his belongings on July 12, 2007, he argued with his step-father and shot and killed Elado Robledo. This was witnessed by neighbor Sam Saiz, Jr. and another person who was driving by at the time.

During the investigation, law enforcement located Petitioner's shoe, a pair of shorts and some clothing in a trash dumpster several blocks from the scene. Although no firearm was located, jail

calls were intercepted where Petitioner directed his cousin to an area to remove a “ban ban”, something Petitioner admitted was a gun that he used in self-defense during the shooting.

The State introduced prior bad acts during trial. Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim’s house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother’s windshield.

During his testimony, the Petitioner claimed self-defense and told jurors that the shoe and shorts were a result of his step-father’s assault. He said that his step-father had a gun and he had something in his hands, causing the Petitioner to fear for his safety. During cross-examination, Petitioner refused to respond to the prosecutor’s questions, electing instead to chastise his defense counsel.

During a break, the Petitioner tripped over a table due to the shackles on his ankles. He complained of prejudice because jurors were present in the courtroom. The trial court held that jurors could not see the shackles, as a skirt covered the trial table. None of the jurors was questioned regarding the incident and what he/she saw, nor did trial counsel request a mistrial.

ARGUMENT

Petitioner, Albert Ramirez, adequately alleges claims, which entitle him to legal argument and/or an evidentiary hearing on the following grounds: Denial of his sixth amendment right to effective assistance of counsel and denial of his due process right to a representative venire panel.

I. PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT OF COMPULSORY PROCESS WHEN HIS ATTORNEY FAILED TO CALL DR. MAXANN SHWARTZ TO REBUT THE STATE'S MERE ASSERTIONS OF MALINGERING AND TO TESTIFY AT TRIAL ABOUT THE DEFENDANT'S STATE OF MIND.

A. It is Ineffective Assistance of Counsel to Ignore a Defendant's Right of Compulsory Process.

The Sixth Amendment's right to counsel guarantee requires that effective assistance of counsel be given at all stages of the proceedings, and New Mexico has affirmed this right. U.S. Const. amends VI and XIV; N.M. Const. Art. II § 14; *State v. Robinson*, 99 N.M. 674, 662 P.2d 1341 (1983). Defense counsel's performance is measured against "an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *State v. Orona*, 97 N.M. 232, 638 P.2d 1077 (1982); *State v. Dean*, 105 N.M. 5, 727 P.2d 944 (Ct. App. 1986) (standard is whether defense counsel exercised the skill, judgment, and diligence of a reasonably competent attorney).

As noted by *Strickland v. Washington*, "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction...has two components:

- 1) First, the defendant must show that counsel's performance was deficient...
- 2) Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687.

In order to prevail on an ineffective assistance claim, the defendant must show her counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced. *State v. Talley*, 103 N.M. 33, 34, 702 P.2d 353, 354 (Ct. App. 1985). Prejudice is measured by "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland v. Washington*, 466 U.S. 668, 695, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984). The test for judging any claim

of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104 S. Ct. at 2064. In reviewing an ineffectiveness claim, the entire proceedings must be considered as a whole. *Id.*; *State v. Talley*, *State v. Lovato*, 110 N.M. 146, 147, 793 P.2d 276, 277 (Ct. App. 1990).

In cases of egregious failure by trial counsel, defendants are relieved of the burden of establishing prejudice due to "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *United States v. Cronin*, 466 U.S. 648, 659 (1984). The *Cronin* court described three such circumstances:

- (1) denial of counsel altogether;
- (2) defense counsel's failure "to subject the prosecution's case to meaningful adversarial testing"; and
- (3) when the accused is "denied the right of effective cross-examination." *Id.*

This is such a case. Counsel failed to subject the prosecution's case to meaningful adversarial testing. *State v. Aragon*, 2009-NMCA-102, ¶ 15, 147 N.M. 26, 216 P.3d 276 (prima facie demonstration of ineffective assistance where trial counsel failed to secure an expert necessary to explain the State's evidence).

B. Trial Counsel Erred in Failing to Call Dr. Maxann Schwartz as a Witness to Rebut the State's Mere Assertions of Malingering and Denied Mr. Ramirez his Rights to Compulsory Process and Fair Trial when he Refused to Call Dr. Schwartz to Testify Regarding Mr. Ramirez' Mens Rea.

Mr. Ramirez was evaluated by an accredited psychologist, Dr. Maxann Schwartz, who found him incompetent to stand trial and who did not find malingering. Dr. Schwartz was not called at the final hearing to determine competency to testify about Mr. Ramirez' present competency and against the state's assertion of mere malingering. As a result, the Court could only consider the findings of

Dr. Burness, from NMBHI, who testified that she believed Mr. Ramirez was pretending not to understand. The Court relied on this testimony to adjudge Mr. Ramirez competent to stand trial.

Although Mr. Ramirez requested that his attorney call Dr. Shwartz as a witness at trial to address his state of mind, his counsel refused to do so. This failure to call Dr. Shwartz to testify as to competency at the time of the event resulted in a denial of Mr. Ramirez' right of compulsory process. Criminal defendants have the right to put before a jury evidence that might influence the determination of guilt.' *Taylor v. Illinois*, 108 S. Ct. 646 (1988) citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)(criminal defendant's conviction reversed and remanded because he was not allowed to examine government documents that may have affected the outcome of the trial)).

The right to present a defense is "as American as apple pie". Defendants are constitutionally entitled to: be heard, effectively present evidence central to their defense, call-witnesses to testify on their behalf, and rebut evidence presented by the prosecution. It is well established that the Sixth Amendment guarantees the right of Confrontation. As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to call witnesses to testify on their own behalf and if necessary, to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. *See* N.M. Const., Art. II, Sec. 14 ("[i]n all criminal prosecutions, the accused shall have the right . . . to have compulsory process to compel the attendance of necessary witnesses in his behalf . . ."); U.S. Const. amend. VI ("[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . ."). Without this right, Defendant asserts, his broader right to a fair trial, guaranteed by the Fourteenth Amendment to the United States Constitution and

by Article II, Section 18 of the New Mexico Constitution, was imperiled. *See generally* Peter Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71, 166-70 (1974).

Few rights are more fundamental than that of an accused to present his own defense" *Taylor v. Illinois*, 108 S. Ct. 646 (1988); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). Our United States Supreme Court has held that the right to present a defense consisted of the right to compel the attendance of witnesses and offer their testimony and that such a right "stands on no lesser footing than other Sixth Amendment rights that we have previously held applicable to the states.'" *Taylor v. Illinois*, 108 S. Ct. at 652-653 (quoting *Washington v. Texas*, 388 U.S. 14, 18 (1967)). Such a right "is an essential attribute of the adversary system itself." 46 *Id.* (citing *United States v. Nixon*, 418 U.S. 683 (1974)(President's duty violated his constitutional right "to have compulsory process to compel the attendance of necessary witnesses in his behalf"). *See also* N.M. Const., Art. II, § 14; *see State v. Cooley*, 19 N.M. 91, 140 P. 1111, 52 L.R.A., N.S., 230 (1914).

Mr. Ramirez was charged with first degree murder—a charge that on its face requires a showing that his actions were willful and deliberate and which requires a showing of premeditation. [Exhibit B]; *See State v. Montoya*, 1963, 72 N.M. 178, 381 P.2d 963; *State v. Ybarra*, 1918, 24 N.M. 413, 174 P. 212 (essential elements of murder in the first degree include the elements of deliberation and premeditation). "An abnormal mental condition may influence the probability that a defendant premeditated and deliberated-and so be taken into account by a jury in determining whether those states of mind existed in fact (beyond a reasonable doubt)-even though it did not eliminate the capacity for premeditation." *United States v. Peterson*, 509 F.2d 408, 416-17 (D.C. Cir. 1974). "[E]xpert testimony is admissible if it merely 'support[s] an inference or conclusion that the defendant did or did not have the requisite mens rea.'" *United States v. Bennett*, 161 F.3d 171, 183 (3rd Cir.

1998) (*quoting United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997)). Dr. Shwartz' testimony was relevant, we note that New Mexico courts have long allowed such expert testimony relating to a defendant's mental state at the time of the commission of the offense. *See id.*; *see also State v. Elliot*, 96 N.M. 798, 635 P.2d 1001 (Ct. App. 1981); *State v. Smith*, 80 N.M. 126, 452 P.2d 195 (Ct. App. 1969). Regardless, Dr. Shwartz was not called at trial to testify about Mr. Ramirez' present competency and against the state's assertion of mere malingering. *State v. Balderama*, 88 P.3d 845, 135 N.M. 329 (2004).

Counsel's failure to pursue a potentially meritorious defense raises substantial questions of ineffective assistance counsel. *See State v. Luna*, 1979-NMCA-048, ¶27, 92 N.M. 680 (Court addressed issues relating to ineffective assistance of counsel for failure to file pre-trial motions regarding charge of conspiracy when 3 other co-defendants had that particular charge dismissed, leaving no one to conspire with). "The testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies...counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986)(internal citations omitted); *see also Strickland*, 466 U.S. at 687-88.

Reasonable professional performance includes a duty to investigate all reasonable lines of defense. *Fisher v. Gibson*, 282 F.3d 1283, 1291 (10th Cir. 2002), *citing Strickland*, 466 U.S. at 691. The failure to pursue information from a key witness regarding the basis of the accused's most important defense cannot be considered sound trial strategy. *Sanders v. Ratelle*, 21 F. 3d 1446, 1456 (9th Cir. 1994). Counsel is ineffective if he fails to conduct an adequate investigation into the

defendant's most viable theory of the defense. *Bigelow v. Williams*, 367 F.3d 562 (6th Cir. 2004) (reasonable prudence should lead lawyer to recognize the importance of potential witness testimony). The failure to pursue an adequate defense may establish grounds for finding ineffective assistance of counsel. *State v. Barnett*, 1998-NMCA-105, ¶ 30, 125 N.M. 739 citing ABA Standards for Criminal Justice Pleas of Guilty, Standard 14-3.2 (2nd edition 1980).

Whether defense counsel's actions were unreasonable or caused prejudice cannot be established by the trial record; *State v. Plouse*, 2003-NMCA-048, ¶ 15, 133 N.M. 495, 64 P.3d 522; rather, a habeas proceeding is the appropriate procedure, so that "the defendant may actually develop the record with respect to defense counsel's actions." *State v. Arrendondo*, 2012-NMSC-013, ¶ 38. New Mexico appellate courts frequently remand claims of ineffective assistance of counsel brought on direct appeal for further evidentiary hearings. *State v. Hunter*, 2006-NMSC-043, ¶30, 140 N.M. 406, 143 P.3d 168. "[H]abeas corpus proceedings are the preferred avenue for adjudicating ineffective assistance of counsel claims, because the record before the trial court may not adequately document the sort of evidence essential to a determination of trial counsel's effectiveness." *Id.* (internal quotation marks and citation omitted). Thus, we have held that an evidentiary hearing in most cases "may be necessary." *Id.* (internal quotation marks and citation omitted).

Defendant's ability to confront his accuser and to obtain compulsory process, protected by the Sixth Amendment to the United States Constitution as well as Article II, Section 14 of the New Mexico Constitution, was compromised. As a result, Mr. Ramirez was denied his right of due process contrary to N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 and compulsory process as guaranteed by N.M. Const, Art. II, Sec. 14 and U.S. Const. Amend. VI.

"A defendant is not entitled to an attorney who will 'leave not the smallest stone unturned'

...but when the defendant has but one stone, it should at least be nudged.” *Coleman v. Brown*, 802 F.2d 1227, 1234 (10th Cir. 1986)(internal citations omitted). Mr. Ramirez submits that failure to call Dr. Schwartz as a witness, per his request, was tantamount to ignoring a boulder. Because the appellate attorney did not fully recognize this issue on direct appeal, Mr. Ramirez also includes his appellate attorney in his ineffective assistance claim, supported by authority provided herein.

II. PRIOR BAD ACTS SHOULD NOT HAVE BEEN INTRODUCED AND THEIR INTRODUCTION DENIED THE PETITIONER HIS RIGHT TO A FAIR TRIAL.

A Defendant is presumed innocent and is entitled to due process and a fair trial. U.S. Const., amend V., XIV; N.M. Const., art. II § 18.” *State v. Martin*, 1984-NMSC-077, ¶ 17, 101 N.M. 595 (fair trial); U.S. Const., amends VI and VII, and N.M. Const., Art. II, sec. 14 and 18 (presumption of innocence); and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

The evidence was not relevant. It is the state's burden to establish the relevancy of the proffered evidence *State v. Herrera*, 92 N.M. 7, 582 P.2d 384 (Ct. App.), *cert. denied*, 91 N.M. 751, 580 P.2d 972 (1978). Rule 404(B) is a specialized rule of relevancy which requires counsel to identify the consequential fact to which the proffered evidence of other acts is directed. *State v. Aguayo*, 114 N.M. 124, 835 P.2d 840 (Ct. App), *cert. denied*, 113 N.M. 744, 832 P.2d 1223 (1992). It is only then, after the proponent has provided the trial court with an adequate basis, that the trial court should decide whether the probative value of the evidence is not substantially outweighed by the prejudicial impact. *State v. Beachum*, 96 N.M. 566, 568-69, 632 P.2d 1204, 1206-07 (Ct. App. 1981)(emphasis added). Such evidence should not be received when "very probably its sole result,

or at least its overwhelming result, will be that of establishing defendant's bad character, or his disposition or propensity to commit crime, as the basis for an inference that he committed the crime with which he is charged and for which he is being tried." *State v. Mason*, 79 N.M. 663, 667, 448 P.2d 175, 179 (Ct. App.), *cert. denied*, 79 N.M. 688, 448 P.2d 489 (1968).

As noted by the Court of Appeals in *State v. Andrade*, 1998-NMCA-031, ¶12

[o]ur rules of evidence, following longstanding legal tradition, insist that a defendant not be convicted by a jury simply on evidence that the defendant is a bad person." *citing* Rule 11-404 NMRA.....[e]vidence of a defendant's prior misconduct ordinarily is not admissible to support the inference that the defendant has a propensity to commit unlawful acts and therefore is likely to have committed the charged act. New Mexico has been particularly strict in limiting evidence of prior crimes." *citing State v. Wrighter*, 1996-NMCA-077.

Although evidence of other bad acts may be relevant, the risk that the jury will convict because Defendant is a bad person and needs to be punished creates a prejudicial effect. Rule 11-404 (b) provides that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith or to show criminal propensity. *See State v. Roybal*, 115 N.M. 27, 846 P.2d 333 (Ct. App. 1992)("Generally, proof of other crimes has a tendency to prejudice the minds of the trier of facts and predispose them to a belief in the accused's guilt.").

Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield. The State presumably sought protection under Rule 11-404 (b) as indicated below.

The broken front window was never proven to be the Defendant. Incredibly, the State sought introduction of this act to show motive. The evidence was not relevant to defendant's motive to commit the instant offense, as the State could not prove that it was the Defendant who broke the window and not just a random act. *See e.g. State v. Ruiz*, 119 N.M. 515, 892 P.2d 962 (Ct. App. 1995); *State v. Williams*, 117 N.M. 551, 874 P.2d 12 (1994)(prior relationship with victim or merely enjoying sex is not sufficient to suggest that a defendant had cause to force himself on the victim). Admission of prior acts must be shown to sufficiently be similar to the charged acts to indicate they were likely done by the same person. In order for evidence to be admissible under this exception, the similarity must rise above the level of characteristics common to many incidents of the crime and must indicate a distinct pattern of conduct. The incident was not so distinctive as to constitute a "unique or distinct pattern easily attributable to one person." *State v. Beachum*, 96 N.M. 566, 568, 632 P.2d 1204, 1206 (Ct. App. 1981).

The firearms expert could not recall what kind of weapon Mr. Ramirez allegedly sought to purchase; he could not recall when exactly Mr. Ramirez came to his business; he did not keep a copy of the firearms application form which he claims he received from Mr. Ramirez. Although trial counsel sought to exclude the evidence, the trial court allowed the State to introduce it to support motive and premeditation. This was in violation of Rule 11-404(B) which provides that evidence of a defendant's prior acts is admissible to show proof of motive. Factually similar incidents cannot, alone, prove plan, particularly when the acts are several years apart and the State must be able to prove the act was somehow part of a bigger plan. *State v. Montoya*, 116 N.M. 72, 860 P.2d 202 (Ct. App. 1993).

Finally, whether Mr. Ramirez did or did not break his mother's windshield, the evidence was neither relevant nor probative to prove that Mr. Ramirez intended harm to his step-father. The evidence was admitted in violation of Rule 11-404(A) NMRA 2004 (providing that "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). *See State v. Lucero*, 114 N.M. 489, 492, 840 P.2d 1255, 1258 (Ct. App. 1992); *see also State v. Alberts*, 80 N.M. 472, 474, 457 P.2d 991, 993 (Ct. App. 1969) (finding that if the sole purpose of evidence is to demonstrate bad character, reputation, or disposition, its prejudicial effect makes it inadmissible).

On the whole, the probative value of the evidence did not outweigh the prejudicial effect for which the State introduced it. As noted in *State v. Williams supra*, "[i]f evidence of prior acts is relevant and admissible for a purpose other than proving a defendant's propensity to commit a crime, the probative value of the evidence must outweigh its prejudicial effect". *Id. citing State v. Landers*, 115 N.M. 514, 517, 853 P.3d 1270, 1273 (1993); NMRA 1999, 11-403; *State v. Beachum*, 96 N.M. 566, 567-68, 632 P.2d 1204, 1205-06 (Ct. App. 1981).

Even when admitting prior bad acts evidence under a recognized exception, the trial court must still meet the requisites of 11-403. *State v. Wrighter*, 122 N.M. 200, 922 P.2d 582 (Ct. App. 1996). The trial court may admit evidence under NMRA 1999, Rule 11-404(B) if the probative value of the evidence outweighs any prejudicial effect. *State v. Landers*, 115 N.M. at 518, 853 P.3d at 1274.

There is no indication that the Court balanced the prejudicial effect of the evidence against its probative value to determine if "the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. *See* Rule 11-403, NMRA 2001.

Even allowing that evidence of the defendant's prior history was admissible to establish context, *See Jones*, the trial court must engage in a balancing requirement of NMRA 1999, 11-403.

State v. Rojo, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829 ("Under Rule 11-403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."

Proof of other crimes has a tendency to prejudice the minds of the triers of fact and to predispose them to a belief in the accused's guilt. *See State v. Rowell*, 77 N.M. 124, 419 P.2d 966 (1966); *State v. Allen*, 91 N.M. 759, 581 P.2d 22 (Ct. App. 1978).

The real danger of admitting past conduct is that, if the jury believed the testimony, the jury would conclude that the Defendant acted in conformance therewith, and if he did so then, it is more likely he did so now. One cannot ignore the long tradition of courts and commentators expressing fear that jurors are too likely to give undue weight to evidence of a defendant's prior misconduct and perhaps even to convict the defendant solely because of a belief that the defendant is a bad person.

State v. Lamure, 115 N.M. 61, 71, 846 P.2d 1070, 1080 (Ct. App. 1992), *cert. denied*, 114 N.M. 720, 845 P.2d 814 (1993). Rule 404(B) is designed to prevent this kind of perception. *Id.* Testimony which amounts to evidence of a defendant's bad character, or disposition to commit the crime charged, when not offered for a legitimate purpose, is inadmissible and unfairly prejudicial. *State v. Rael*, 117 N.M. 539, 540, 873 P.2d 284, 286 (Ct. App. 1994).

Defendant submits that it was prejudicial error to admit evidence of prior uncharged conduct, *State v. Ross*, 88 N.M. 1, 536 P.2d 265 (Ct. App. 1975). Any references to other offenses may be probative, but its probative value is substantially outweighed by the prejudice to the Defendant. *State v. Hogervorst*, 90 N.M. 580, 566 P.2d 828 (Ct. App. 1977). Accordingly, Defendant's rights to fair trial and due process were violated. U.S. Const., amend V., XIV; N.M. Const., art. II § 18 (fair trial) and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 (due process).

Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

III. THE PETITIONER WAS LIKELY PREJUDICED AND DENIED HIS RIGHT TO A FAIR TRIAL WHEN HIS FALL WAS A DIRECT RESULT OF BEING SHACKLED AND HIS ATTORNEY DID NOT SEEK TO HAVE JURORS POLLED REGARDING WHETHER THEY SAW THE SHACKLES OR NOT.

A person in custody “coming into court for trial is entitled to make his appearance free of shackles or bonds.” *State v. Holly*, 2009-NMSC-004, ¶ 41, 145 N.M. 513, 201 P.3d 844 (internal quotation marks and citation omitted); *see also* Rule 5-115(C) NMRA (“Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains or stun belts, a visible bullet proof vest or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury.”). The record does not reflect that any order was issued by the trial court, until after the fall, whereby the shackles were removed for the remainder of the trial.

Petitioner recognizes that “a defendant's right to appear free of visible restraints is not absolute”, *State v. Johnson*, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 229 P.3d 523, as “it must be balanced against the state's interest in maintaining security.” *State v. Gomez*, 1971-NMCA-009, ¶¶ 2-7, 82 N.M. 333, 481 P.2d 412 (upholding the district court's denial of mistrial where jurors had viewed the defendant in handcuffs only as safety requirements demanded, “prior to the beginning of trial and during recess”). In this case; however, there were other adequate remedies to ensure the safety of the community and the integrity of security.

While a juror's “inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial,” *See Holly*, 2009-NMSC-004, ¶ 41, in this case, there

may have been 12 jurors who observed Mr. Ramirez in shackles. In *Holly*, a single juror may have seen the defendant in handcuffs during his escort back to detention. *Id.* ¶ 40. Rather than calling attention to the incident by questioning the jurors, the district court chose to remedy the situation by repeating the general jury instructions to the jurors. *Id.* On appeal, our appellate court concluded that the incident did not constitute fundamental error because "it [was] unclear whether any exposure actually occurred, or if it did, that it was anything more than inadvertent or insignificant exposure." *Id.* ¶ 42. Here, there is nothing indicating that the Defense sought to question jurors regarding what they did/did not see when the defendant fell; rather, an assertion was made and the parties determined that likely none of the jurors saw anything. Another difference is that the defendant in *Holly* was wearing handcuffs. Shackles are arguably more egregious.

Given the uncertainty, the Defense should have demanded the jurors each be questioned individually and should have moved for a mistrial. In *State v. Mills*, 1980-NMCA-005, ¶ 15, 94 N.M. 17, 606 P.2d 1111, at least one juror viewed the defendant in handcuffs while a bailiff was escorting the defendant from the courtroom during a noon recess. The defendant moved for a mistrial, arguing that the incident deprived him of a fair trial. *Id.* The bailiff explained to the district court that he had waited with the defendant "for the time normally required for the departure of jurors, " and "that the view occurred because some jurors had used the restroom before departing." *Id.* ¶ 16. The district court held that the juror's observation of defendant in handcuffs was inadvertent and denied the defendant's motion for a mistrial, reasoning that "any impropriety resulting from the view was harmless" because the evidence at trial showed that the defendant was incarcerated. *Id.* ¶¶ 16-17. This case differs in three respects: the observation may have been made by all of the jurors; the defendant

in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

IV. MR. RAMIREZ ADDITIONALLY REQUESTS THE COURT CONSIDER ADDITIONAL ISSUES WHICH WERE INHERENT IN HIS TRIAL, BUT WHICH WERE NOT RAISED BY HIS APPELLATE ATTORNEY.

Undersigned provided Mr. Ramirez with a copy of the Petition and asked that he contact her with any suggestions/changes. No contact was made; however, in meeting with Mr. Ramirez, he made requests for additional arguments and they are therefore addressed briefly. *See State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985). (counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit). Mr. Ramirez asks this Court to consider the following in the context of the entire trial:

I. Sufficiency of the Evidence. If the State does present evidence sufficient to support a finding of guilt beyond a reasonable doubt, the verdict violates the Due Process Clause. *See Jackson v. Virginia*, 443 U.S. 307, 317–18 (1979). Proof beyond a reasonable doubt is equivalent to proof "to a moral certainty," and refers to the highest degree of confidence with which an historical or physical fact can be known. *Victor v. Nebraska*, 511 U.S. 1, 11-12 (1994). *See also State v. Silva*, 2008-NMSC-051, ¶¶ 19-20, 144 N.M. 815, 192 P.3d 1192 (prosecution failed to present "any evidence, circumstantial or otherwise, of an overt act" by the defendant from which the jury could infer an intent to defendant), and *State v. Duran*, 2006-NMSC-035, ¶¶ 15-16, 140 N.M. 94, 140 P.3d

515.. 2008-NMSC-051, ¶ 19 (no evidence of any act by the defendant to destroy or hide evidence, with the only support for the tampering charge stemming from the fact that the evidence was not found).

2. Prosecutorial Misconduct. Without objection from trial counsel, the prosecutor claimed that Mr. Ramirez was a “menace to society”, a liar and during his closing argument. Prosecutorial misconduct reaches the level of fundamental error when it is egregious and so pervasive and prejudicial that the defendant was deprived of a fair trial and applies only when a defendant's conviction would shock the conscience if allowed to stand, or when an error is such that the fundamental integrity of the judicial process is implicated. *State v. Sosa*, 2009-NMSC-056, ¶ 35, 147 N.M. 351, 223 P.3d 348. Mr. Ramirez maintains that his conviction, when viewed against the prosecutor's comments and conduct, would shock the conscience if allowed to stand.

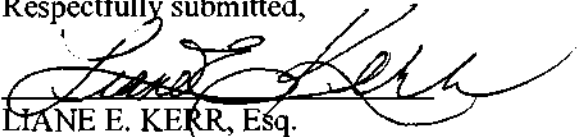
3. Double jeopardy. Mr. Ramirez believes that being twice charged with evidence tampering was tantamount to double jeopardy. No person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Imposing multiple punishments for tampering charges directed at the same item of evidence, violates the right to be free from double jeopardy. *State v. DeGraff*, 2006-NMSC-011, ¶ 34, 139 N.M. 211, 131 P.3d 61. However, Undersigned recognizes that distinct acts, separated by time and space, do not violate double jeopardy. *See State v. Quick*, 2009-NMSC-015, ¶ 25 (stating that “[d]istinctness may be established by determining whether the acts constituting the two offenses [were] . . . separated by time or space”).

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless

it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶ 3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶ 6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



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VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

1, the undersigned, being first duly sworn upon my oath, state that I am the Petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained therein are true and correct to the best of my knowledge, information, and belief.

ALBERT RAMIREZ
Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

SUBSCRIBED AND SWORN TO before me this 10th day of May, 2018,
by Albert Ramirez.


NOTARY PUBLIC

My Commission Expires: 12/18/2021

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the Respondent and the district attorney in the county in which the petition is filed by _____ U.S. mail, postage prepaid, this 14th day of May, 2018



LIANE E. KERR, Esq.

EXHIBIT LOG

EXHIBIT	IDENTIFICATION/LOCATION
A	Indictment
B	Jury Instruction
C	Verdicts
Q	J&S
F	Broke mother's windshield; Transcript, 10/8/13, 4:03:49-4:08:21; pg. 2-3
F	Shackles; Transcript, 10/7/13, 3:10:07-3:11:12; pg. 1
G	Notice to Determine Competency (1/14/07)
H	Evaluation by Dr. Maxann Schwartz (incompetent)
L	Commitment to NMBHI for 3 months
J	Dr. Burness testified that Defendant malingering; Transcript 10/9/13 CD B-2:41:40, pg. 19
K	Competency Hearing: pgs. 1-42
L	Order Determining Competency (9/16/08)
M	Motion in Limine re: statements made to Dr. Burness
N	2 nd Motion for Mental Evaluation (9/22/2011)
Q	Court Order for 2 nd Evaluation at NMBHI
P	Further forensic testing ordered by court
Q	Order deeming Defendant competent to stand trial on March 1, 2013
R	The defense attorney informs court that there were matters concerning Mr. Ramirez' mental health. Transcript: 10/7/13, 12:05 ; pg. 9
S	The Court notes that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. Transcript: 10/8/13, CD B 8:42:10-8:43:50; pg. 6
T	Mr. Ramirez issues a rambling statement about his health and said that he heard voices and is concerned his attorney is mad at him. Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58; pg. 13, 15-18, 20-21

U	Defense reminds the Court of competency issues and alerts the Court that Mr. Ramirez does not understand the proceedings and is incapable of assisting in his defense. Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49; pgs. 9-12
V	Court expresses that Mr. Ramirez is malingering, but notes it had never seen a defendant act the way Mr. Ramirez was acting. Transcript: 10/9/13, 10:18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20; pg. 19, 31
W	Another Defense request for review of competency. Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46; pgs. 35, 12
X	Mr. Ramirez asks that jury be told about his medical problems and tells the Court that he does not believe the trial to be fair, as the right questions were not being asked; Dr. Shwartz' testimony is necessary to him having a fair trial. Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15; pgs. 20-33
Y	The Defense informs the Court and the State that it will not be submitting a competency instruction. Transcript: 10/10/13, 4:32:27-4:35:41; pgs. 32, 34
Z	Transcriptionist Certificate

IN THE NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY OF CURRY

07 JUL 20 PM 12:10

STATE OF NEW MEXICO.

Plaintiff,

vs.

No. D-0905-CR-0200700

434

ALBERT JOSE RAMIREZ

TEDDY L. HARTLEY

DOB: [REDACTED] 1988

SOC: [REDACTED] 7793

STN: 050100070340

Defendant.

Crime(s): **Count 1: First Degree Murder (Willful and Deliberate)**
Count 2: Tampering with Evidence
Count 3: Tampering with Evidence

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

Count 1: First Degree Murder (Willful and Deliberate), in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did kill Eladio Robledo, with the deliberate intention to take away the life of or any other human being, N.M.S.A. 1978, contrary to Section 30-2-1(A)(1), a capital offense.

Count 2: Tampering with Evidence (Third Degree Felony), in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did destroy/change/hide/fabricate/place a firearm with the intent to prevent the apprehension,

Exhibit A

RP 1

prosecution or conviction of Albert Ramirez OR create the false impression that another person had committed a crime. NMSA 1978, contrary to Section 30-22-05, a third degree felony.

Count 3: **Tampering with Evidence (Third Degree Felony)**, in that on or about, July 12, 2007, in Curry County, New Mexico, the above-named defendant did destroy/change/hide/fabricate/place jeans with the intent to prevent the apprehension, prosecution or conviction of Albert Ramirez OR create the false impression that another person had committed a crime. NMSA 1978, contrary to Section 30-22-05, a third degree felony.

The names of the witnesses upon whose testimony this Indictment is based are as follows:

1. Brent Aguilar, Clovis Police Department, Clovis, NM 88101;
2. Dehra Ramirez, 512 W. 6th Street, Clovis, NM 88101;
3. Ivan Vasquez, 714 W 13th #A, Clovis, NM 88101;
4. Roger Grah, Clovis Police Department, 300 Connelly, Clovis, NM 88101;
5. Sam Saiz, 515 W. 6th, Clovis, NM 88101;
6. Sandy Loomis, Curry County Sheriff's Office, 700 N Main, Clovis, NM 88101;
7. Waldo Casarez, Curry County Sheriff's Department, Clovis, NM 88101;
8. James Patterson, 910 East 6th Street OR 1100 Wallace, Clovis, NM 88101

I hereby certify that the foregoing Indictment is a True Bill.

Trudy McPeck
FOREMAN

DATED: 7-20-07

Defendant's Address: [REDACTED]

Defendant's S.S.N.: [REDACTED] 7793

D.A. Case Number: 07-471

Magistrate Number: M-12-FR-200700389

APPROVED:

Matth Chen L, D.A.

State vs. Albert Jose Ramirez
Grand Jury Indictment
No.

Jury Instruction No. 4

For you to find the Defendant guilty of First Degree Murder by a deliberate killing as charged in Count I, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The Defendant killed Eladio Robledo;
2. The killing was with the deliberate intention to take away the life of Eladio Robledo;
3. This happened in New Mexico on or about the 12th day of July, 2007.

A deliberate intention refers to the state of mind of the Defendant. A deliberate intention may be inferred from all of the facts and circumstances of the killing. The word deliberate means arrived at or determined upon as a result of careful thought and the weighing of the consideration for and against the proposed course of action. A calculated judgment and decision may be arrived at in a short period of time. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not a deliberate intention to kill. To constitute a deliberate killing, the slayer must weigh and consider the question of killing and his reasons for and against such a choice.

EXHIBIT B

RP443

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

RECEIVED
CLERK
FILED

2013 OCT 11 PM 3:05

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

Defendant.

No. D-0905-CR-0200700434

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT I: FIRST DEGREE MURDER.

Lisa Labrum
FOREPERSON

DATED:

Lisa Labrum
10-11-13

Exhibit C

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

2013 OCT 11 PM 3:06

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ

No. D-0905-CR-0200700434

Defendant.

SPECIAL VERDICT FORM

Do you unanimously find beyond a reasonable doubt that a firearm was used in the
commission of the murder as charged in Count I?

YES (Yes or No)

Lisa Salomon

FOREPERSON

10-11-13

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

FILED
2013 OCT 11 PM 3:05

2013 OCT 11 PM 3:05

[Handwritten signature]

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT II: TAMPERING WITH
EVIDENCE.

[Handwritten signature]
FOREPERSON

DATED:

10-11-13

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

CURRY COUNTY
2019 OCT 11 PM 3:05

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

VERDICT

We find the defendant, Albert Ramirez, GUILTY of COUNT III: TAMPERING WITH
EVIDENCE.


FOREPERSON

DATED:

10-11-13

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

FILED IN DISTRICT
COURT
FILED IN DISTRICT

2014 JAN -8 AM 11:11

STATE OF NEW MEXICO.

Shelly B. Banger
CLERK OF DISTRICT COURT

Plaintiff.

v.

ALBERT JOSE RAMIREZ.

DOB: [REDACTED] 988

SOC: [REDACTED] 793

STN: 050100070340

No. D-0905-CR-0200700434

Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER coming on for hearing on January 8, 2014, before the Honorable Teddy F. Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant appearing personally and by his attorney, Jesse R. Cosby, Attorney at Law, the Defendant having been convicted on October 11, 2013, pursuant to guilty verdicts by the jury accepted and recorded by the Court of the following crime(s):

Count 1: [0001], Murder in the first degree (willful & deliberate), contrary to §30-02-01(A)(1), NMSA 1978.

Count 2: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Count 3: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Exhibit D

RP710

Defendant is hereby found and adjudged guilty and convicted of said crime(s), and is sentenced to be imprisoned by the Department of Corrections for the following terms:

As to Count 1, a term of life imprisonment.

As to Count 2, a term of three (3) years.

As to Count 3, a term of three (3) years.

Counts 1, 2, and 3, shall run consecutively, one after the other, for a total term of life imprisonment, plus six (6) years. *mental and physical health as available.*

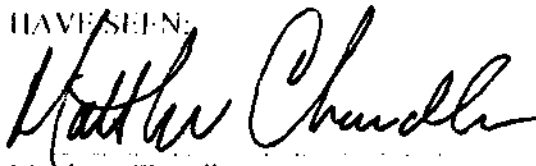
Dept of Corrections shall provide mental and physical treatment as available. jmc
Upon completion of the term provided herein, the Defendant will be subject to release under parole supervision, subject to the statutory provisions relating to condition, supervision and return of parolees.

Therefore, You, the Sheriff of Curry County, are hereby commanded to take Defendant in custody and deliver Albert Jose Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive him and confine Albert Jose Ramirez for the above term.

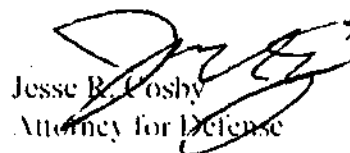
Defendant shall receive credit for 2370 days (6 years, 5 months, 25 days) of pre-sentence confinement, from date of arrest on July 15, 2007, until date of sentencing, January 8, 2014, and for post-sentence confinement from January 9, 2014, until delivery to the Department of Corrections.


TEDDY L. HARTLEY
DISTRICT JUDGE

HAVE SEEN:



Matthew Chandler
District Attorney


Jesse B. Cosby
Attorney for Defense

D.A. MC jwg

RP911

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/8/13 4:14:04

2 PO: Uh, I noticed the damage and then I asked her what had happened.

3 MC: Noticed what damage?

4 PO: Uh, the window broken.

5 MC: What window did you notice that was damaged.

6 PO: This one right here.

7 MC: The one that appears to have cardboard on it right now?

8 PO: Yes sir the one with the wind, air-conditioner.

9 MC: And did you write a report.

10 PO: Yes sir.

11 MC: with a copy of the damage?

12 PO: Yes sir.

13 MC: Uh, did you ever find out who did it?

14 PO: When I spoke with her she said ...

15 JC: Consultation, hearsay we can't ...

16 DT: I can't, you can't ask him.

17 10/11/13 8:55:25 – 8:59:31 (Talking about some case and provocation instruction) (8:48:14 – 8:58:37)

18 DT: Are you suggesting that he broke the windows out on the day of the incident that's not my
19 memory.

20 MC: My suggestion is this. That since the Trespass was given to him in April, he continued to
21 torment and harass them, he broke their windows out. There was testimony that he called
22 repeated to the point where they had to turn off their phones. They locked their doors because of

Exhibit E.

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 him. They padlocked his room. Mr. (inaudible) was trying to avoid him, uh, he was scared of
2 that was the evidence that was presented.
3

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 DT: = Judge Drew Tatum
2 JC: = Defense Counsel, Jesse Cosby
3 BC: = Defense Counsel, Brett Carter
4 MC: = ADA Matthew Chandler
5 UF: = Unidentified Female
6
7
8
9

10 10/7/13 3:10:07- 3:11:12 (3:10:35 – 3:11:09)

11 DT: Now there's some issue about restraints?

12 JC: He's tied to this table, (inaudible)

13 DT: And I wonder if it's necessary to have him restrained while he's in this room.

14 UF: That's, uh, per Lieutenant decided yes.

15 DT: Do what now?

16 UF: That's part of Lieutenant.

17 JC: Well I ask the court to overrule.

18 DT: Um, yeah. We're not gonna have him, cause we would be back and forth and I don't want that
19 to be a, an appellate problem so I don't want him restrained in this room. And-and be careful
20 what the Jury sees.
21

Exhibit F

NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

NINTH JUDICIAL DISTRICT COURT
CURRY COUNTY, NM
FILED IN CLERK'S OFFICE

2008 JAN 14 AM 10:21

STATE OF NEW MEXICO,

Plaintiff,

CLERK OF DISTRICT COURT

vs.

ALBERT JOSE RAMIREZ,

NO. D-0905-CR-0200700434

Defendant.

NOTICE OF FILING TO DETERMINE COMPETENCY OF THE DEFENDANT TO
STAND TRIAL

Comes now the defendant and informs the court and counsel for the state that the defendant has filed a motion for a forensic evaluation due to defendant's inability to assist counsel in his defense. One of the purposes for the evaluation is to determine whether the defendant is competent to stand trial. The motion was filed in cause number D-0905-CV-0200700713.



Brett J. Carter
DISTRICT PUBLIC DEFENDER

Exhibit A

RP 136

MAXANN SHWARTZ, PH.D.
Licensed Psychologist

3228 Los Arboles Ave. NE
Bldg. A, Suite 230
Albuquerque, New Mexico 87111

New Mexico License 0922
California License PSY15845
Telephone: (505) 331-7224

FORENSIC NEUROPSYCHOLOGICAL EVALUATION

(CONFIDENTIAL)

This report is confidential, and unless its release is in accord with the rules of criminal or civil procedure, it should not be released to anyone without written consent of the defendant. While the defendant does have a right to see this report, it is strongly recommended that (s) he do so in the presence of the psychologist so that the findings and results can be properly interpreted and any questions or concerns can be addressed. If the report is given to the defendant by anyone other than a psychologist, it is highly likely that (s) he can misunderstand the report's content, and the information may not necessarily present him/her in a favorable light.

NAME:	RAMIREZ, Albert Jose
DDB:	██████████ 1988
AGE:	19 years-old
SS#:	██████████
COURT NUMBER:	D-905-CR-0200700434
EXAMINER:	Maxann Shwartz, Ph.D.
DATE(S) OF EVALUATION:	03/10/2008
DATE OF REPORT:	03/14/2008
REFERRED BY:	Brett J. Carter Counsel for Defense State of New Mexico/Curry County Ninth Judicial District

Exhibit H

COURT: Ninth Judicial District Court
Curry County
State of New Mexico

PLACE OF EVALUATION: Curry County Courthouse
Clovis, New Mexico

Reason for Referral and Charges

The defendant, Mr. Albert Ramirez, was referred for a Forensic Neuropsychological Evaluation to provide information regarding his current cognitive, psychological, and emotional functioning. Mr. Ramirez' attorneys have expressed concern regarding his competence to stand trial as he has been unable to discuss any aspect of the case with them, despite numerous attempts. They have also described his behavior as bizarre with confused and disorganized thinking. His overall functioning will be evaluated in terms of his competency to stand trial. Mr. Ramirez has been charged with Murder (Open Count) and Tampering with Evidence (2 counts), for events that occurred on or between July 12, 2007, in Curry County, New Mexico. Mr. Ramirez is incarcerated at the Curry County Detention Center (CCDC).

New Mexico Criteria for Determining Competence

(1) The Client must have a factual understanding of the charges and legal proceedings, (2) The Client must also have a rational understanding of the charges and legal proceedings, and (3) The Client must have the ability to assist his or her attorney (State vs. Rotherham, 1996).

Note:

The following report and opinions are based on information made available to the psychologist at the time of the evaluation. Unless specifically noted, there has not been a systematic effort made to substantiate the full accuracy of all of the information provided in this report. The report is based on the assumption that the information provided is reasonably accurate, unless noted to the contrary. The psychologist reserves the right to modify opinions or conclusions, if additional information relevant to the findings is provided at a later date.

Disclosure of Limits of Confidentiality and Informed Consent

Prior to the initiation of the forensic evaluation, Mr. Albert Ramirez was informed of the purpose of the evaluation, about my role as a forensic psychologist, that his participation was voluntary, and that the information that he provided in the evaluation may not be confidential. The defendant was unable to communicate that he understood the purpose of the evaluation and that he was going to undergo a forensic evaluation. He was then informed that information from the evaluation would be provided to the Court regarding his current cognitive and intellectual capabilities and that the information he provided was not confidential. The defendant consented to proceed with the evaluation by signing the "Statement of Rights and Limits of Confidentiality" disclosure form, which was explained to him and outlines the purpose of the evaluation.

Mr. Ramirez was informed that he has the right to refuse to participate in the evaluation or answer specific questions, and the fact that in addition to his attorneys, the report and/or information may be disclosed to the Court and/or the prosecution trial attorneys. He was also informed that the psychologist may also be asked to testify with regards to information gathered in the evaluation. The defendant attempted to participate in a structured clinical interview, but was unable to complete the interview or participate in neuropsychological and psychological tests and questionnaires, or complete a competency test due to his current psychological and emotional state. As a result, the testing session lasted a total of 3.0 hours. The evaluation was conducted in an adequate environment and the results are believed to represent a valid measure of the defendant's current cognitive and emotional functioning and status.

SOURCES OF INFORMATION:

1. Clinical interview with Mr. Albert Ramirez (defendant)
2. Interviews with Brett Carter and Chandler Blair (attorneys for defendant)
3. Request For Expert Witness/Investigator
4. Clovis Police Department
 - a. Investigative Report: Randy Pitcock, Detective; 7/12/07
 - b. State of New Mexico Uniform Incident Report; 7/12/07
 - c. State of New Mexico Supplemental Report; 7/13/07
 - d. Supplemental Report Narrative; 7/23/07
 - e. Supplemental Report: Homicide; 7/12/07
 - f. Supplemental Report: Officer Antonio Bosque; 7/13/07
 - g. Felony Case File- Ivan Vasquez (exhibit 9)
 - h. Criminal Trespass Notification (exhibit 10p)
 - i. State of New Mexico Uniform Incident Report; 6/21/07; (exhibit 10q)

16. Photo (exhibit 10d)
17. Media Advisory Clovis Police Department (exhibit 10e)
18. Grah's notes/ Action Sheet (exhibit 10f)
19. Inmate Calling Solutions (exhibit 10g)
20. Plateau Wireless (exhibit 10h)
21. Call Records 505-309-7772 (exhibit 10i)
22. SMS Records 505-714-2165 (exhibit 10j)
23. Call Records 505-309-4299 (exhibit 10k)
24. Call Records 505-309-7759 (exhibit 10l)
25. Master Name Inquiry (exhibit 10m)
26. Curry County Detention (exhibit 10n)
27. Photo Lineup (exhibit 10o)
28. Curry County Detention (exhibit 10n)
29. #1 Value Inn Guest Registration (exhibit 10r)
30. State of New Mexico, Ninth Judicial District, Office of the District Attorney (exhibit 10s)
31. Information from John Garcia to Roger Grah (exhibit 10t)
32. Photo Lineup (exhibit 10u)
33. The University of New Mexico (UNM) Office of The Medical Investigator (exhibit 10v)
34. Index- List of Exhibits

PSYCHOLOGICAL TESTS/PROCEDURES ADMINISTERED

- Structured Clinical Interview
- Review of List of Exhibits
- Mental Status Exam (MSE)
- Mini Mental Status Exam (MMSE)
- Trail Making Test
- Clock Face
- Portions of The Revised Competence Assessment Instrument

Mental Status Examination:

Behavioral Observations:

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male who was unable to be evaluated due to grossly disorganized behaviors consistent with the positive symptoms associated with a psychotic disorder, including but not limited to: disorganized thinking; rambling, nonsensical speech; paranoia; depersonalization; reports of auditory hallucinations; labile mood; inappropriate affect; loose associations; and poor reality testing. Mr. Ramirez was dressed in the required uniform of the Curry County

Detention Center and had his undershirt on backwards. Mr. Ramirez was unable to perform even simple, goal-directed tasks. He maintained minimal to no eye contact. He evidenced uncontrollable crying throughout the evaluation with uncontrollable shaking. His attorney, Brett Carter, was present in attempt to calm him down and encourage him to participate in the evaluation. Food (McDonald's) was also used as a reinforcer and as an attempt to calm him down. While Mr. Ramirez was eating, he appeared to be more placated and was able to answer several questions. Specifically, he elaborated on being abused by several people, including his foster dad (physical abuse), a neighbor (sexual abuse) and his mother's boyfriend (sexual abuse). However, the majority of his responses to this examiner's questions were answered with "I don't know," or "that's all I know." Otherwise, he attempted to cooperate but eventually would start crying and become hysterical. Occasionally, he was able to provide several coherent and logical responses, however, his thinking would then be followed with tangential remarks with frequent references to his foster dad or paranoid verbalizations, i.e. "I'm scared of everyone. That's all I know. There's something wrong with my mind." For the most part, he was unable to provide any relevant background history. Mr. Ramirez was questioned numerous times about what happened regarding his alleged charge of murder and replied each time with "I used to be a good kid," or "I wasn't like this," and "I just want to talk to my mommy." Mr. Ramirez was unable to read as he could not maintain attention or concentration. He was given the Trail Making Test and was unable to complete one Trail. In sum, he was unable to complete any standardized testing procedures.

Orientation: He was oriented to person, but was poorly oriented to time, date, or location.

Affect/Mood: Mr. Ramirez' mood was labile with congruent affect. He stated that his mood was "very depressed, very bad...I'm so depressed!"

Perception/Thought Process: His thought process was tangential and loose. His thinking was easily derailed as he evidenced paranoia with depersonalization, i.e. "I can't feel my arm that much...I don't know," "I wasn't like this," and "What happened...the real me is full of pain." He acknowledged that he experiences auditory hallucinations, stating "I hear people talking in my head...saying kill myself." He denied visual hallucinations. He presented with frank paranoid ideations.

Mini Mental Status Exam: Mr. Ramirez was administered the Mini Mental Status Examination (MMSE), a widely used screening instrument used to assess cognitive impairment. His results were within the severely impaired range (16/30) and appeared to be due to the presence of a functional psychosis. Mr. Ramirez exhibited poor immediate memory, concentration, and attention.

Memory: His overall memory appeared questionable, e.g. he could not remember the city where he was born.

Judgment/Insight: Impaired/Impaired

Communication: His speech was pressured and rambling. At times, he was able to comprehend questions but was unable to provide consistent or appropriate responses.
Sleep/Diet: Mr. Ramirez reported "I can't sleep at all...I have physical pain and mental pain...I hear people talking in my head." He indicated that his appetite fluctuates and that he has lost weight since being incarcerated.

Suicidal Ideation, Intent, or Plans: He denied a history of suicidal ideations, intent, plans, or attempts, stating "No, they'll put me in that little room."

Substance Abuse History: Mr. Ramirez acknowledged using illegal drugs and alcohol in the past.

Current Medical/Physical Concerns and Medications: He denied past or present use of medications, including being prescribed psychotropic medications.

Current Mental Health Status: Mr. Ramirez presented with symptoms associated with a significant mental illness, including heightened instability of mood. Specifically, he evidenced a mixture of characteristic signs and symptoms involving a range of cognitive and emotional disturbances that may be associated with the initial onset of a psychotic disorder.

DIAGNOSTIC IMPRESSIONS

RULE OUT-

Axis I:	295.30	Schizophrenia, Paranoid Type
	295.70	Schizoaffective Disorder, Bipolar Type
	309.81	Posttraumatic Stress Disorder, Chronic
Axis II:	799.9	Diagnosis Deferred
Axis III:		Defer to Physician Report
Axis IV:		Legal Problems
Axis V:	30	

CONCLUSION

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male, with no known documented history of mental illness. However, throughout the evaluation, he evidenced a constellation of symptoms characteristic of Schizophrenia, including paranoia, psychoses, loose associations, disorganized thinking, poor reality testing,

depersonalization, inappropriate mood and affect, and poor judgment, reasoning, and insight. Mr. Ramirez reported numerous times "There's something wrong with my mind." Because of his current mental state, he was unable to complete a formal evaluation.

Based on his current presentation, Mr. Ramirez is not capable of competently proceeding with adjudication and handling the stress associated with the legal process. In his current state, he has been unable to assist his attorneys in his defense as he is unable to communicate in a logical or rational manner. He is also unable to provide any assistance to his attorneys regarding pertinent circumstances or events that led to his arrest in reference to the alleged charges. It is therefore the opinion of this examiner, that Mr. Albert Ramirez is not competent to stand trial.

Thank you for your referral.

Respectfully submitted by:



Maxann Shwartz, Ph.D.
Licensed Psychologist

IN THE NINTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

vs.

ALBERT JOSE RAMIREZ,

D.O.B.: [REDACTED] 1988

S.S.N.: [REDACTED] 7793

Defendant.

No. D-0905-CR-0200700434

ORDER FOR COMMITMENT TO
THE NEW MEXICO BEHAVIORAL HEALTH INSTITUTE AT LAS VEGAS
FOR TREATMENT TO ATTAIN COMPETENCY TO STAND TRIAL

THIS MATTER having come before the Court; the Court having been advised that the parties stipulate to the Forensic Neuropsychological Evaluation (Confidential), dated March 14, 2008, by examiner Maxann Schwartz, Ph.D., wherein pursuant to the examiner, the Defendant was found not competent to stand trial; and further the parties agree and stipulate to the Court entering a finding that the Defendant is incompetent to stand trial and that the Defendant is dangerous; and the Court being well and sufficiently advised in the premises;

THE COURT HEREBY FINDS:

- 1) that the Defendant is currently incompetent to stand trial;
- 2) that the Defendant is charged with a felony; and,
- 3) that the Defendant is dangerous as defined in N.M.S.A., 1978, Section 31-9-1.2(B) for purposes of having the Defendant treated to competency;

RP 146

Exhibit I

ORDER FOR COMMITMENT

D-0905-CR-0200700434

ALBERT JOSE RAMIREZ

D.O.B.: [REDACTED] 1988

S.S.N.: [REDACTED] 7793

Page 2

4) that the Defendant shall be detained by the Department of Health of the State of New Mexico, in a secure, locked facility, for treatment to enable the Defendant to attain competency to stand trial for a period not to exceed nine (9) months;

5) that the Defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order from the District Court which committed the Defendant;

6) that within thirty (30) days of receipt of the Court's Order of Commitment of an incompetent Defendant and of the necessary and available documents reasonably required for admission pursuant to the written policies adopted by the Secretary of Health or his designee, the Defendant shall be admitted to a facility designated for the treatment of the Defendants who are incompetent to stand trial and are dangerous;

7) that within thirty (30) days of an incompetent Defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the Defendant's treatment shall furnish to the District Court, the Office of the District Attorney and Defense Counsel an initial assessment and treatment plan and a report on the Defendant's amenability to treatment to render him competent to proceed in a criminal case;

8) that within ninety (90) days of entry of the order committing an incompetent Defendant to undergo treatment, the District Court shall conduct a hearing to address the factors listed in Section 31-9-1.3A and seven (7) days prior to that hearing, the treatment supervisor shall submit a written progress report to the Honorable Teddy L. Hartley, District Judge, Division III, Curry County

RP 147

ORDER FOR COMMITMENT

D-0905-CR-0200700434

ALBERT JOSE RAMIREZ

D.O.B.: [REDACTED] 1988

S.S.N.: [REDACTED] 7793

Page 3

Courthouse, 700 North Main Street, Clovis, New Mexico 88101, to Andrea R. Reeb, Chief Deputy District Attorney, 417 Gidding Street, Suite 200, Clovis, New Mexico 88101, and to Brett J. Carter, District Public Defender, 800 Pile Street, Suite A, Clovis, New Mexico 88101, addressing the factors set out in Section 31-9-1.3B(1) (2) and (3), to include but not limited to the following information:

a) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

b) the opinion of the treatment supervisor as to whether the Defendant has attained competency or as to whether the Defendant is making progress under treatment toward attaining competency within nine (9) months from the date of the original finding of incompetency and whether there is substantial probability that the Defendant will attain competency within nine (9) months from the date of the original finding of incompetency;

c) whether the Defendant is dangerous as that term is defined in N.M.S.A., 1978, Section 31-9-1.2 or whether the Defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities code; and,

d) if the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

RP 148

ORDER FOR COMMITMENT

D-0905-CR-0200700434

ALBERT JOSE RAMIREZ

D.O.B.: [REDACTED] 988

S.S.N.: [REDACTED] 7793


Page 4

9) that the Sheriff of Curry County shall transport the Defendant forthwith to the Department of Health in Las Vegas, New Mexico.

Pursuant to N.M.S.A., 1978, Section 43-1-1.D, documents reasonably required by the Secretary of Health's Forensic Evaluator, to show the medical and/or forensic history of the Defendant, shall be released to the Forensic Evaluator.

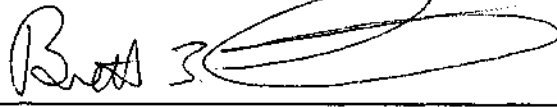
IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Curry County Sheriff's Department shall take custody of the Defendant and transport him to The New Mexico Behavioral Health Institute at Las Vegas and return him to the Curry County Adult Detention Center upon direction of the Las Vegas Medical Center, no later than seventy-two (72) hours after notification by the New Mexico Department of Health (The New Mexico Behavioral Health Institute).


TEDDY L. HARTLEY, District Judge, Division III

HAVE SEEN:


ANDREA R. REEB, Chief Deputy District Attorney


BRETT J. CARTER, District Public Defender
Attorney For Defendant

D.A. No. 07-471 slh

RP 149

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 Maxine Schwartz to evaluate the defendant. She determined the defendant was incompetent to
2 stand trial and submitted a report that was provided to the court and the prosecution. An order
3 finding the defendant currently incompetent to stand trial and committing defendant to the Las
4 Vegas Behavioral Health Unit for treatment to obtain competency was filed April 17th, 2008.
5 The defendant was admitted to that facility on June the 5th, 2008. On August the 18th, 2008 the
6 Las Vegas Behavioral Unit, Behavioral Health Unit prepared a final report finding the defendant-
7 defendant competent to stand trial. A competency hearing was set based upon reports submitted
8 by Dr. Burness. Dr. Burness testified at the competency-competency hearing that it was her
9 opinion that the defendant was faking his symptoms and was competent to stand trial. The court
10 found the defendant competent to stand trial automatically set for trial. This court is of the
11 opinion at this juncture that the opinion of Dr. Burnis that the defendant is faking continues and I
12 believe he is competent to stand trial based upon that testimony. Obviously several years have
13 passed in the interim but, uh, I-I'm prepared to continue this trial, uh, and that's what we're
14 gonna do.
15

Exhibit J.

State of New Mexico vs. Albert Ramirez
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Competency Hearing

1 DT: = Judge Drew Tatum
2 DA: = Female District Attorney
3 MC: = DA Matthew Chandler
4 BC: = Defense Counsel, Brett Carter
5 AR: = Albert Ramirez
6 JB: = Dr. Joanne Burness
7
8
9

10 DT: And we've got, uh, County of Curry, State of New Mexico, the State of New Mexico versus
11 Albert Jose Ramirez, CR number is in 07-00434. Is that you Mr. Ramirez?

12 AR: Yes sir.

13 DT: Mr. Cosby, you be leading this this afternoon?

14 BC: Yes sir.

15 DT: Uh, Mr. Chandler will you be presenting for the State?

16 DA: Yes. This is already been on (inaudible) sir.

17 DT: Okay, alright. Um, who's got the burden on this case?

18 DA: The State does Your Honor.

19 DT: Alright go ahead.

20 DA: Judge, uh, we would call, uh, Dr. Joanne Burness to the stand.

21 DT: Alright. Ms. Burness do you swear that under penalty of law the testimony you'll be giving here
22 this afternoon will be the truth, the whole truth and nothing but the truth?

23 JB: I do sir.

24 DT: Have a seat.

25 JB: Thank you.

26 DA: Judge just before we begin just to remind the Court, um, the defendant was sent up to Las Vegas
27 to be treated for competency in a 9 month period and we have the final report back and we're

Exhibit K

State, of New Mexico vs. Albert Ramirez
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1 prepared to go forward and show the Court by a clear and convincing evidence that he is
2 competent at this time.

3 DT: Alright let the Court advise you that, uh, we weren't doing the (inaudible) some other things, I
4 have not read this report so go forward with the understanding that I will read it before we make
5 a determination but I have not read the report yet.

6 DA: Judge we have not problem if the defense will stipulate to entering that report at this time, um,
7 it's just gonna be testifying some things in the report.

8 DT: Any objection to that?

9 BC: No Judge.

10 DT: Alright begin.

11 DA: Okay thank you.

12 BC: Will that be State's exhibit 1 Judge?

13 DA: Yes, State's 1.

14 DT: State's Exhibit number 1.

15 DA: Can I proceed Your Honor?

16 DT: You may.

17 DA: Ma'am would you state your name please?

18 JB: Certainly, Joanne Allison Burness. My sur name is spelled B-U-R-N-E- double S.

19 DA: And can you tell the Court your current occupation please.

20 JB: Yes. I'm a Clinical Psychologist employed by the State of New Mexico, um, working in the
21 Forensic Division at New Mexico Behavioral Health Institute.

22 DA: And that's Las Vegas?

23 JB: That's Las Vegas. It used to be formerly called Las Vegas Medical Center.

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1 DA: Okay. Can you tell the Court a little bit about your education and background, training, things
2 like that.

3 JB: Certainly. I have a Bachelor of Science in Psychology from the University of Bolton in the
4 United Kingdom, I have a PhD in Neuro-psychology from the University of Sheffield, also
5 United Kingdom, and I have a doctorate in clinical psychology from the University of Teesside
6 in the UK. I moved to the United States in October 2006, uh, initially as an Assistant Professor
7 at a University in Texas, um, then have been employed with New Mexico Behavioral Health
8 since May of last year. I'm licensed in the State of New Mexico by the Board of Psychology
9 Examiners.

10 DA: And have you ever testified as an expert in this area?

11 JB: Yes.

12 DA: Um, how many times?

13 JB: Um, approximately probably now 10 to 12, maybe 10 to 12, 10 to 15 over the last 12 months.

14 DA: At any time in Curry County?

15 JB: Yes I have testified here, um, in Curry County back in, oh earlier this year, maybe 2, 3 months
16 ago, maybe a little longer now.

17 DA: Alright. Can you tell us a little bit about your duties at Las Vegas? What do you do there?

18 JB: Certainly as a-a psycho, I'm clinical coordinator which mean that means that I'm, uh, attuned, I-I
19 supervise the other psychologists, um, at Las Vegas which means that I allocate in their cases,
20 um, I also independently perform competency evaluations, uh, dangerousness assessments, um,
21 for the, for the State up there.

22 DA: Okay. And in fact do you know the defendant in this case, Albert Jose Ramirez?

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- 1 JB: Yes I do. He was with us for a period of, um, just around 3 months earlier this year from June to,
2 um, mid-August of this year.
- 3 DA: And for what purpose did he come to your unit?
- 4 JB: He came for treatment to competence to stand trial. He had been evaluated by Dr. Maxanne
5 Schwartz in the community, one of the community evaluators, she declined that he was not
6 competent to stand trial and a Court Order was then, uh, drawn up and he was sent to us under
7 treatment to competency to stand trial rather than evaluation of competence to stand trial.
- 8 DA: At what date did he come to the facility?
- 9 JB: Um, the 5th of June, 2008 I believe.
- 10 DA: And how long was he there?
- 11 JB: Till August 19th.
- 12 DA: So approximately 2 months?
- 13 JB: Approximately that. Certainly it was under the 3 month framework, um, as per Court Order
14 when anybody comes on a T, what we call TCC, treatment to competence, we have to inform the
15 Court, um, Your Honor that they have arrived 30 days after their arrival at the facility and that's
16 just a brief letter stating basically he's here and we're going to start evaluating him. And then
17 we have to prepare a 90 day report, however, if the individual in our opinion, um, is competent at
18 that point that 90 become a final forensic report. If at the 90 day we're still not convinced either
19 because there's some symptoms of mental illness or there's something that we're concerned
20 about that didn't quite fair the treatment, the individual can stay for a period of up to 9 months,
21 um, when we have to submit the final forensic which at that 9 month period would have to state
22 the individual is, he's either competent at this time or not competent and not restorable.
- 23 DA: Okay. And did you do a 90 day report in this matter?

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1 JB: In, um, Mr. Ramirez' case, I believe that the 90 day actually was the final forensic.

2 DA: Okay. And did you have any hands on experience with this defendant yourself?

3 JB: Yes. I evaluated Mr. Ramirez, I met with him on a number of occasions, um, stopped by and sat
4 3 or 4 occasions. I also, uh, as a psychologist there, I spend quite a lot of time, um, on the units
5 themselves, um, wandering around and sort of familiarizing myself with the patients and what
6 they're doing during the day, um, I'm also talking to the staff of course about how individuals
7 are getting on and quite a lot of our patients will stop me in the, when I'm on the unit and ask
8 me, assist with, you know, various signs of, even things like phone calls which is actually the
9 social workers job but they often stop me and ask. And then they will regularly come up and say
10 do you know when I'm gonna be evaluated and who's gonna be evaluating me and that kind of
11 thing so I have quite a lot of contact with all of our patients but I certainly have individual
12 contact with Mr. Ramirez.

13 DA: Okay. And then other doctors and other people on the shift ...

14 JB: We have, um, basically we work in an inter-disciplinary manner so we have a medical physician,
15 um, assigned to the floor in each division, we have a staff psychiatrist assigned to the division.
16 Obviously we have nursing staff and psych techs who are there 24 hours, round the clock,
17 observations. Um, we have social workers, each patient's assigned a social worker who will help
18 facilitate visits and phone calls and that's one of their duties. Um, and we also have a (inaudible)
19 have had over this center period four master level psychology interns, um, under my supervision
20 and they fit to be running the group, work on the unit.

21 DA: Okay. And then they give you all the information that they observe also from an individual?

22 JB: They do.

23 DA: And that goes into your report?

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1 JB: They-they do. They document it in, um, a computer program called Avatar, which is basically a-
2 a computerized medical record, so they document but every-every member or staff can document
3 into Avatar so anything that occurs on the unit can be documented. It's also written up in their
4 progress notes, um, on the chart. So we-we can, uh, collect information from-from the written
5 documentation not just verbally but they have to provide verbal information.

6 DA: Okay. Can you tell the Court when Mr. Ram-Ramirez arrived how the initial intake procedure
7 went with him.

8 JB: Sure. I didn't do the initial intake eval, uh, admission procedure, we had a, we have a, um, I-I
9 guess just a tried and tested, or has been a tried and tested procedure, where Dr. Bangroll, who's
10 the division elector so psychologist, he admits the patients to the unit, decides which unit they-
11 they are best suited for. We have 3 units or 4 if you include the ladies unit, but 3 units for the
12 gentlemen, um, we have an acute care unit, which as-as it's name suggests if somebody comes in
13 and they are clearly, floridly psychotic or clearly mentally ill, they'll often be assigned to the
14 acute care unit. It's a smaller unit and basically it means that we can spend more time evaluating
15 that-that individual. Um, if they're dangerous when they, when they arrive as a result of mental
16 illness or just behavioral, um, poor behavior, they can be allocated to max-maximum security.
17 Um, and alternatively if they're fairly stable and they're not pre-presenting, not noted from
18 County Detention as presenting difficulties, they'll be assigned to the continuing care unit.

19 DA: Is that where Mr. Ramirez ...

20 JB: And that's where Mr. Ramirez was assigned on his arrival. As I said usually that's the slightly
21 more stable individuals from the mental-mental health point of view, it's a larger unit, has up to
22 40 patients at any given point in time on that particular unit. So Dr. Bagwell did the admission

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1 and then, um, passed oversee Mr. Ramirez file to myself because then I-I allocate accordingly
2 who's gonna to-to take on his case and in this case it was going to be myself.

3 DA: Okay. And did you speak with Dr. Bagwell or review his notes about the admission process?

4 JB: Yes I, yes I did. Um, we, when we admit somebody we actually have to dictate an admission
5 psychiatric evaluation or NAP, that is, that is, um, a piece of paper or-or a set of papers that go
6 into the patient's, um, medical record and also we keep a-a copy of that ourselves so I know what
7 people look like if you like on admission even if I haven't seen them the day that they arrive. On
8 the higher profile cases by which obviously I'm talking about the-the cases where there's, uh,
9 high charges are more severe, um,

10 DA: As in this case?

11 JB: As in this case. I'll usually try and meet with the person fairly early just to see, and to put a face
12 and a name together but also to see what they look like because how do you measure change if
13 you don't see them early on.

14 DA: Okay. And what was his mental status on admission?

15 JB: Um, as I recall and if it's okay ...

16 DA: Sure.

17 JB: ... I'll refer back to my-my report, uh, Dr. ... where are we ... um, yeah Dr. Bagwell, um,
18 commented that Mr. Ramirez, um, uh, presented as-as not having any physical problems but he
19 made very poor eye contact, he didn't-didn't want to-to, um, look anybody in the eye. Um, his
20 hygiene and grooming were not particularly good, he was un-unkempt but that's in fact it's not
21 necessarily unusual from-from the Detention Centers. Um, but everything was, uh, in terms of,
22 uh, his-his psycho and motor abilities, ability to-to move and function that seemed to be

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1 unimpaired. Um, he tended to rock and he cried a lot on-on admission, he-he really didn't-didn't
2 communicate well at all, spent a lot of time being very tearful. Um, the time he was being ...

3 DA: Did he cooperate with the admission process?

4 JB: No not fully, no.

5 DA: Okay. Would he answer questions?

6 JB: No he was pretty, um, uh, not mute but very, very, um, unwilling to-to respond to questions
7 when asked so a full mental status exam if I remember correctly wasn't, um, possible because he
8 was not cooperating.

9 DA: Okay. Now what criteria are you looking at for the unit to determine if somebody is competent?
10 What are you aiming for?

11 JB: Okay, the three, the three aspects of competency according to New Mexico Uniform Jury, um,
12 Regulations are that the individual should understand what they're charged with, they should be
13 able to understand how serious those charges are and what the likely outcome and penalty may
14 be for-for whatever they're charged with. They need to have an understanding of the Court
15 process and how it works and what people do in the Courtroom and they have to be able to
16 factually assist their attorney and also the big, the big one that kind of, uh, is the most difficult I
17 guess is to be able to rationally assist their attorney in the preparation of their defense.

18 DA: Okay. And can you tell the Court the different things the defendant is subject to, um, throughout
19 this stay? As far as what evaluations, um, 24 hour observation, different things you're gonna
20 look at.

21 JB: Yeah. Well have, certainly we have 24 hour observation of all of our-our patients. Um, there-
22 there are obviously, there's-there's cameras in the rooms and cameras on the units, um, a psych
23 techs and nursing staff are there 24 hours, um, they have med-medical physician who will

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1 examine the individual on their arrival to make sure that there's no medical health problems but
2 who will also meet with the patient if they say I have pain or I have tooth ache or I need an eye
3 exam. So he-he will arrange that. Um, the patients can attend group, are encouraged to attend
4 groups, uh, we have three groups running, we have substance misuse or substance abuse group,
5 anger management group and competency restoration group, um, which the patients are-are as I
6 say encouraged to attend. Um, they run on a weekly basis. Um, what else well obviously we
7 have the staff psychiatrist who will again be present on admission, um, and also will meet with
8 the patient in subsequent days or weeks, um, either on the patient's request or more likely just
9 because the staff say this person needs re-evaluating or can you juggle this person's medications
10 or whatever it may be.

11 DA: Okay. Now I want to talk to you about and I'm gonna kind of go through your report a little bit,
12 the, um, limits of the confidentiality section.

13 JB: Okay.

14 DA: Um, did you go over those with Mr. Ramirez? Or did somebody from your unit?

15 JB: Yes. Um, when somebody's admitted we-we go through all the, all the little bits of
16 confidentiality. (inaudible) made were to explain that, um, the, that basically this is not a
17 doctor/patient relationship as it might be in the community. That, um, anything that they say,
18 um, or any conversation that we have may be reported back to the Court. Um, and that nothing
19 can be kept secret. And that's repeated each time that we meet the individual for an evaluation
20 whichever psychologist meets always explains and then says can you tell me what I've said in
21 your own words. And depending upon on how the individual replies back to that, we get a sense
22 of whether they've understood or not.

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1 DA: Okay. And did he state, the defendant, whether he understood the limits of this confidentiality
2 warning?

3 JB: Well he claimed, Mr. Ramirez stated that he did not understand the limits of confidentiality,
4 however, given the conversations that he had with some of my-my intern staff and with other
5 members on the unit as well as a report from the Detention Center prior to his arrival at the
6 facility, which I have a-a comment in there, I was quite skeptical that he did not understand.

7 DA: Can you explain to the Court some of the comments he made on the unit or to the Detention
8 Center.

9 JB: Well prior to his arrival, we-we always get a-a little, um, a little bit of information from the RN
10 at the, at the Detention Center on-on the individual particularly of course if they're taking
11 medications, what they're taking and what doses. It also how's their behavior being, whilst
12 they're being in detention partly because we need to know for our safety of our own staff if
13 somebody's going to be violent when they arrive. And, uh, the report for Mr. Ramirez actually
14 at the time he was admitted, um, and the behavior the, uh, nurse stated he's in isolation, has
15 asked other inmates there how he can fool the system to fake mental illness and then make
16 statements to nurse like, um, upper body not hooked to his lower body. Um, so on his admission
17 he first started talking to my interns about how he could get his charges reduced from, um, 1st
18 Degree down to 4th Degree. Um, but if he was found not competent that would mean that his
19 charges will be dismissed and he would be able to go home and he made a lot of comments
20 about, um, you know, reducing the severity of the-the charge in terms of the level of felony, um,
21 and the value of being found competent, uh, being found not competent. When one of the interns
22 explained to him that actually not being found not competent does not mean that your charges
23 are dismissed, um, he was quite upset about that and then started talking about well how else

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1 could he get his charges, get the charges reduced. He would also those conversations with
2 myself, he came up to me, um, at one point during his stay and said was it right if the charge, if
3 the charges were reduced, if he was found not competent that he wouldn't be released and I, and
4 I said yes that that's quite for-for a charge as serious as this one that was correct.

5 DA: So comments like those made you skeptical ...

6 JB: Yes.

7 DA: ... of (inaudible) and understand.

8 JB: Yes.

9 DA: Alright. Um, there was some background information taken I'm assuming you get kind of
10 history from him?

11 JB: Yes we try, we do it yes from everybody we do our best.

12 DA: And were you able to get good history from him?

13 JB: Not a good history, a very disjointed history.

14 DA: Why is that?

15 JB: Uh, Mr. Ramirez in-in his evaluations presented as very histrionic, uh, very dramatic, um, he
16 would, um, spend, he good off on a tan, not really go off on a tangent actually cause he would
17 stay on-on track in relation to the conversation that he was having but he would, um, he would
18 repeat a lot of things over and over again. Um, and very insistent you-you have got this haven't
19 you? You know, you-you are listening to what I'm telling you. And so his history was, uh,
20 predominantly, uh, described in terms of his two foster placements, um, he varied in terms of, a
21 little bit in terms of what age he was, he was actually placed in foster care but the damage that
22 the foster parents had-had done to him and that as a result of them, that's when he, you know,
23 gone-gone and got into trouble with the law.

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1 DA: What did he say about that? That his foster parents had done?

2 JB: He said that his foster parents, specifically he said his foster parents had made him mentally
3 retarded he was not mentally retarded before he went there but after he spent time there, he-he
4 was. He said that they physically abused him, um, as well as emotionally abused him, they made
5 him like a child. One-one-one set of foster parents had made him like a child because they made
6 him eat with the little kids and they wouldn't let him, um, watch cable and they'd lock him in his
7 room and wouldn't let him do anything, um, and as a result he became mentally retarded. I
8 asked if he had a-a formal diagnosis from anybody else of-of MR and he hadn't and his history
9 doesn't reflect, um, a-a genuine mental retardation as according to diagnostic statistical manual.
10 Um, he made a lot of negative comments about both, I guess about both foster placements, um,
11 which tended again to be quite, but he'd, um, at one point they hadn't let, um, they called, they
12 made him the way he was by making him drive a manual car and if they bought an automatic he
13 wouldn't have got into trouble and he-he-he went on to describe a lot of physical health problems
14 to do with his shoulder and his arm and his legs.

15 DA: And what about that? This, his medical ...

16 JB: Well-well that we got a voluminous, a voluminous pile from the Detention Center when he
17 arrived because he repeatedly in Detention asked to meet with the medical physician to the point
18 there's a note saying that the medical physicians wouldn't meet with him any further unless the
19 nursing staff could identify a genuine need and that was similar to-to his presentation, um, at-at
20 Vegas where he, every day he wanted to see the psychiatrist and the medical physician but the
21 one examination actual in particular in relation to medical complaints there were no medical
22 conditions.

23 DA: Were you ever able to validate any medical ...

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1 JB: No.

2 DA: ... with him.

3 JB: No.

4 DA: Or any history of medical issues?

5 JB: No.

6 DA: What about a physical abuse or sexual abuse? Anything like that?

7 JB: Nothing that-that's been validated.

8 DA: So were you skeptical of that information?

9 JB: Yes. And especially in the way it presents Size was our medical, Size was our-our medical
10 doctor, he-he was, when-when we come up, well every morning we'd meet and-and we would
11 round and again all the disciplines I mentioned earlier were down around the table and we'd go
12 through each of the units and we'd talk about not every patient but every patient that something's
13 happened with over the 24 hour period, if there's been an altercation, if there seems as if they're
14 improving, if they're, actually because if they're not improving, if they're not well, things like
15 that and so every morning, we'd meet every morning our CC unit will come and say, you know,
16 Mr. Ramirez wants to meet with whoever and whoever around the table would be okay but
17 they'd go and they wouldn't be able to identify anything specific.

18 DA: Alright. What about his psychiatric history? You said that he claimed he was mentally retarded,
19 did he claim anything else?

20 JB: I'd have to remind myself.

21 DA: Or were you able to ...

22 JB: I mean, well-well sorry I don't, yes Mr. Ramirez ever-every-every I met with him or actually
23 members of staff met him, he claimed to be bi-polar, he claimed to have schizophrenia, he

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1 claimed to have pretty much every mental illness that, uh, I think truthfully if I had given Mr.
2 Ramirez a-a DSM to read, he would have decided he had every psychiatric condition in there.

3 DA: Okay. Ever find any proof that he was on any medications of any sort?

4 JB: He wasn't on any medications on his arrival at the facility, uh, I'm sorry, he, um, he had a-a PRN
5 medication at the facility just which, that was Zoloft, um, it's a mood stabilizer, and I know
6 psychiatrists did prescribe some medication for him as a mood stabilizer because he was, he was
7 quite extreme in his moods, um, very impulsive, um, very active. He's a very active (inaudible),
8 he should be at 19 I guess but he-he'd be quite hyper young man. So it was to try, and-and got
9 angry pretty easily too so just to try to kind of calm him down a little bit, they also County did
10 prescribed a couple of meds.

11 DA: (inaudible) a-a mind altering medication

12 JB: No.

13 DA: ... in the sense of competency?

14 JB: No. Nothing for, there's no-no genuine evidence of-of-of a mental illness of the nature of bi-
15 polar disorder or schizophrenia.

16 DA: Okay. Um, let's talk about while he was on the continuing care unit. How did he do on the unit
17 as far as interacting?

18 JB: He did, he did well on the unit. He-he-he had good interactions with other groups, some other
19 patients, uh, he, well he had patients he got along with. He-he did tend to be a little bit, uh, well
20 as I say, impulsive, um, would kind of stand, crowd in the nurses door, very attention, very
21 attention seeking and demanding, uh, from staff and wanting things straight away. Um, he, this,
22 the interns that ran the groups, um, again and he was, um, he was all of, one of the first groups he

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1 was making sexually inappropriate gestures which he didn't witness, it was one of the techs and
2 he was removed from that group as a result of that at one, at one point.

3 DA: Did he participate in the different type of counseling? Anger Management? Substance Abuse?

4 JB: He did. He did attend, he did attend the groups. Um, yes. He was reluctant to attend
5 competency, um, and my experience is that the, that the-the patients we have who don't want to
6 be competent, don't go to that group because they have a vested interest in, you know, obviously
7 not getting to that stage so they often will not attend competency group but he did attend anger
8 and I think he attended substance but certainly anger, quite regularly.

9 DA: Alright. Let's move on to the different tests you performed on competency. Um, well let's talk
10 about the MCMI/3 I guess ...

11 JB: Yeah third edition.

12 DA: Third edition?

13 JB: The MCMI is a, is a personality inventory and, um, we-we try and, uh, get a personality, um,
14 psychometric from pretty much all of our patients. The MCMI is one, is the simplest, um, and in
15 America is the one that's used most regular, the people know of most is the MMPI, um, but it is
16 a, it's a huge measure, it's 567 questions, I mean it's pretty daunting, um, and I didn't believe
17 that Mr. Ramirez' attention span would have, would have coped well with that even if it had
18 been over time. Um, another measure is more complicated in the sense that you have to choose
19 on a scale of sort of 1 to 5 where you, whether you've, that you highly agree with a statement to
20 highly disagree and again I didn't feel that his attention, he would do well with that and a lot of
21 our patients don't, I think it's just a little bit too complex. The MCMI's a simple, fairly simple
22 measure, it's true/false response, the instructions are mark each one, you know, read each
23 statement and the statement might be something like I feel depressed most of the time, um, and

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1 then you have to decide whether it's true or false for you. And if you can't make your mind up,
2 you're to, you're instructed to-to go for the false and it's 175 questions. Um, Mr. Ramirez
3 invalidated it basically by over endorsing so he-he over endorsed essentially pretty much
4 everything on there in terms of having again all these difficulties and-and life being extremely ...

5 DT: Excuse me. I don't know what you mean by over endorsing.

6 JB: He-he, um, basically said true to pretty much everything. So-so, he-he would state that, um, you
7 know, every-every difficulty being in there. I feel depressed most of the time, true. I have days
8 when I'm, I don't have very many days when I'm not blue, um, I've had trouble with drugs and
9 alcohol. He-he said yes to pretty much everything. And the point really why I'm making that is
10 it's quite difficult to invalidate the MCMI, it's a very flexible little measure, um, in the sense that
11 it-it, you have to, you have to work to over endorse that much on that particular measure. Um,

12 DA: So he invalidated the test completely.

13 JB: Yes. So the, we could, you could get, I mean what happens is when you then put it into the
14 scoring system, if it, if they have a, if the individual has a score over and above a certain value it
15 just, basically the computer just says no I can't do this.

16 DA: Alright. So what did you do after that? What tests?

17 JB: Well after that I mean, yeah if I administered the-the SIMS, the stretched (inaudible) malingering
18 symptomatology.

19 DA: What's malingering mean?

20 JB: Malingering means to feign, uh, to feign something.

21 DA: Meaning like ...

22 JB: But usually feigning mental illness in the context of where I come from. And people will
23 malingering for a number of different reasons. Uh, for example if you have a, um, if you're going

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1 for disability, social, uh, social disability, as a result of an accident, people may over endorse
2 their limp, they over endorse their physical, that would be more, that would be another form of-
3 of malingering but it's basically when you do make conscious effort to or-or deliberate effort I
4 guess to, um, be more impaired than you actually probably are in reality in order to gain, to have
5 a second, uh, to-to gain, to gain something.

6 DA: And so the SIMS test is designed to pick that up.

7 JB: It is. It's a screening measure. There are many that are, that are wide range of, and I'm happy to
8 say why I didn't use anything after that, um, but the SIMS is the basic screen and the nice thing
9 about the SIMS is it provides, um, indication, an indication of somebody's tendency to
10 exaggerate, feign or malingering, if you would that word, um, not just psychiatric illness but also
11 neurological impairment or neuro-psychological deficit. So it, and-and it looks cognitive
12 impairment so it tries to pick up both aspects. Many of the other malingering measures are
13 specific to cognitive impairment or psychiatric impairment.

14 DA: How did he do on this test?

15 JB: He scored very high and the test has a cut off score of 14, um, in other words anybody who's
16 scoring above 14 on this measure is providing some indication that they are, that they're over
17 exaggerating and he provided I think it was 46 or 47.

18 DA: So very high.

19 JB: Very high. I think the highest I've ever seen, I've seen is 56 and he wasn't quite there, he wasn't
20 quite at my record level yet but he was, he was, he was high up there which means that he over
21 endorsed items or he endorsed items on 5 of the sub-scales. The sub-scales are neurologic
22 impairment so the implication being that neurologically he's not intact. Psy-psychosis or
23 psychosis, actually meaning he endorsed all the items indicating that he was psychotic, um, the

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1 other three, effective so again emotional mood problems, um, low intellect so endorsing that he,
2 you know, he really didn't understand, he must have done that but intellectually he's so impaired
3 which fits of course with his presentation of telling me consistently about having MR, and, um,
4 there's one other that's escaped me, briefly.

5 DA: Okay. But based on that test what was your opinion after that test?

6 JB: Well it's not, it was my opinion prior to but and that's why I screened using that-that particular
7 measure just to see what he'd provide but his-his presentation on the unit, um, and from-from the
8 moment he was admitted was so bizarre but not bizarre in a consistent, not bizarre in a consistent
9 with mentally ill, just histrionic, dramatic, um, very-very much, um, blaming everybody for-for-
10 for his problems, not able to accept it although in-in his life and, um, his presentation did not
11 provide any of us across the team with any consistent belief that we had a mentally ill person on
12 our hand.

13 DA: And you talk more about seeing more of a personality style ...

14 JB: Yeah.

15 DA: ... rather than an mental illness?

16 JB: I mean I think, I think in fairness there-there's some impulse control issues, there may be some
17 hypo-active issues or may have been in-in-in childhood, there's-there's certainly anger
18 management issues, um, I mean, you know, he's a, he's a not a, you know, he's a disturbed
19 young man but he's not ment, in my opinion, he's not mentally ill.

20 DA: Okay. Let's talk about, um, well let's first real for the record talk about the diagnostic
21 impressions, um, the diagnosis for that. What did you find after those tests? The Access One
22 and Access Two.

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1 JB: Uh, on Access One I concluded malingering and also mood disorder, I note-noted or I specified
2 there's mood disorder, yes, there's mood disturbance with, for Mr. Ramirez but and if it's not
3 due to bi-polar disorder, schizophrenia or hence the not otherwise specified. Um, and then
4 obviously personality disorder.

5 DA: Alright I want to talk about the different things you look at for competency to stand trial. Um,
6 specifically let's start with understanding of the charges and the potential consequences. Um,
7 you gave the opinion in your report what as far as that.

8 JB: That Mr. Ramirez does understand what he's charged with. Um, the fact that he spent, he-he
9 was very vested in how can I reduce this from a 1st Degree to a 4th Degree and therefore get it
10 dropped. He was also vested in, um, well the reason I did what I did was because and I
11 explained some of that earlier on in-in my testimony, um, because of the family, the foster
12 family, and his up-bringing and not being able to drive a-a manual car and whatever, or I'm
13 sorry, being forced to a manual car not an automatic. Um, he was also very, um, he actually
14 compiled in paperwork and he had written down what guilty but mentally ill means.

15 DA: Where did he get that paperwork from? Did he look at books? Or did he ...

16 JB: Competency group, from the comp, the girls, from the, from the girls that were running the group
17 he would ask them what is guilty but mentally ill mean? Oh is that something that I should be
18 thinking about? What does not guilty by reason of insanity and he told me during the evaluation
19 that, uh, he had a-a, the-the charges resulted from, you know, a period of kind of temporary
20 insanity.

21 DA: Okay so it's your opinion that he understands the charges and the potential consequences.

22 JB: Oh and the seriousness yes.

23 DA: Okay. What about understanding the trial process?

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1 JB: Well Mr. Ramirez claimed not to know anything about the Court process and I'm afraid I'm, I
2 am always rather skeptical when somebody does that because he has been adjudicated in the
3 past, um, so he's certainly been through the Court system at some point. Um, so not to know
4 anything at all when you've been through that system is-is not really very believable unless you
5 have had some sort of traumatic brain injury between the last time at trial, you were in Court
6 and-and the current time.

7 DA: No evidence of that.

8 JB: And there's no evidence of that. Um, so I-I felt that he certainly would know more than he was
9 willing to-to tell me about at all.

10 DA: How did, how did you figure out whether he did know more?

11 JB: Um ...

12 DA: Or if you did.

13 JB: Well I don't really know that I-I could say because he-he understood some very, when asked
14 specific questions about what does the District Attorney do? What does the Public Defender do?
15 You get don't know, don't know. Um, but when ...

16 DA: Or what the Judge did?

17 JB: Um, but I get don't know. But then when you just let him talk about the case and about his, he
18 would give me information, oh yes my family's around in the Courtroom, um, at one point he
19 said, um, I said what happens if you move around or-or, you know, speak out of tum, out of tum
20 in Court, and he said oh I'll get taken out of Court but I won't remember that, somebody will
21 have to remind me of that. But, I, it's inconsistent. Very inconsistent with-with his past and
22 with, you know, with what happens in the groups, you know, they run a mock trial in the group,

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1 um, so the guys pretty much always have some knowledge even if it's rudimentary or basic so
2 don't know, don't know goes against any level of knowledge of what happens in a Courtroom.

3 DA: He sounds like he had absolutely no knowledge whatsoever which was skeptical to you.

4 JB: Yeah. And, um, also, you know, the-the guys watch television and television's flooded with
5 legal and, uh, crime scene and, you know, crime so it's-it's hard to not have that, any of that
6 information unless you live in a complete vacuum.

7 DA: Did he talk about his, uh, ability to help his attorney?

8 JB: Well he talked about what he wanted to get, how he wanted to get a sentence of one year pre-
9 confinement, a year house arrest, and a year probation or he said he'd-he'd take a year house
10 arrest and 4 years probation. And he said I think I can do that if I can get my charges reduced
11 because of the plea of temporary insanity. So he's ...

12 DA: So he didn't know anything about the Court process but he knew a lot about his pleas and ...

13 JB: And he, and that indicates that he could certainly talk to his attorney, you know, whatever the
14 rationality in relation to whether any of those, um, those pleas are appropriate, that's not, nothing
15 from where I'm going, but he could sit and talk to his attorney about that which I think shows an
16 ability to rationally and factually certainly assist your defense.

17 DA: And as far, he said something about, um, he would happy to go to a jury trial and tell them what
18 happened and I'll cry too, what was that statement about.

19 JB: Well that-that statement was, I mean I think you're guess is as good as mine really I mean it-it's
20 not exactly a bizarre statement but there's certainly a sense that Mr. Ramirez always said that if
21 he could show people how distressed he was and if he could convey to him all the-the terrible
22 things that have happened to him and it's really through the awful life that he had with the foster
23 care that-that would be, um, allow, that would give him leeway in the sense that people would be

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1 more sympathetic and he won't, he thought a jury would be more sympathetic to him in that
2 case.

3 DA: So is it your opinion that you believe he can assist his attorney-attorney at trial?

4 JB: I believe he can. I think he-he will need information provided fairly slowly and probably quite
5 concretely where possible and, you know, without a lot of, well with a minimal amount of
6 confusing jar, again all-all legal language but that's I think that is to do with his general level of-
7 of functioning but I think, I don't, I don't see any reason why he should not be able to assist his
8 attorney.

9 DA: Can you tell the Court what your final opinion was on the defendant's competency to stand trial?

10 JB: Yeah. In my clinical opinion that Mr. Ramirez is competent to stand trial. I don't think he wants
11 to though, because he doesn't want to stand trial and-and, um, you know, I think he-he-he
12 shocked himself by the charges if that makes sense. But, um, I think he is competent to.

13 DA: Can you explain, um it says that you feel he's feigning or malingering. Can you explain what
14 you mean by that?

15 JB: I think that Mr. Ramirez came to us in Vegas with the belief that if he was found not competent
16 then his charges would be dismissed and I think he was, I-I-I, he found out I think fairly early on
17 that that was not necessarily the case. Um, he learned about 1.5 commitment and I think he
18 would have preferred, been probably to have stayed in Vegas than to spend time in Detention.
19 He told me that he didn't handle Detention well, he was yelling, screaming, swearing, and-and
20 that was certainly supported by the Detention and we didn't see as much of that behavior because
21 it's a-a freer environment in the sense of that, you know, our patients are not in lock down 23
22 hours out of 24 so and the food's better, everybody says apparently. So most-most of our
23 patients would prefer to be with us than they would actually be in Detention but I, when Mr.

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1 Ramirez came he certainly didn't, he might have understood that not being competent meant you
2 didn't go to Detention but I don't think at that point he fully understood that you may end up
3 with a 30 year or a life sentence which you spend in Vegas without any reduced time for parole,
4 without any time reduction for good behavior and so on. Um, but I think when he was weighing
5 of the odds he still felt Vegas was a-a-a better place to be. Um, so he-he came in telling us that
6 he had a lot of mental illness which I don't believe he does.

7 DA: And it only took you 2 months approximately from the intake procedure to actually when the
8 report came out to figure this out that he was ...

9 JB: I think it probably took 2 weeks.

10 DA: Okay. So you're comfortable with your opinion. Is it difficult for somebody to come up there?
11 Have you ever seen someone be able to come up there and fake symptoms like that and be on the
12 unit and get away with it?

13 JB: Um, they don't get away with it for very long. Um, we normally try and push them out at the, at
14 the 3, maximum of the 3 month mark. Um, sometimes what we find is that we've got somebody
15 with, uh, mental illness and when you treat the mental illness, you still end up with that
16 personality disorder underneath it that results in them acting and behaving in very difficult to
17 manage ways. But you, that's after you've treated so when they first arrive you don't know
18 whether their difficult to manager behavior is mental illness or behavior. And then you treat the
19 illness and you find the behavior's still there. Um, but there was no evidence of that in this case,
20 um, so people don't, the answer I think is no people do not get away with it for-for any potential,
21 I'm testifying in Bernalillo on Friday in a very similar situation as this.

22 DA: As far as medications you said he's only on, um, what was the medication?

23 JB: Um, I think our psychiatrist had prescribed Aadvin which is for ...

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- 1 DA: Mood?
- 2 JB: ... yeah, and maybe still Zoloft or I'd-I'd have to go back and have a look but it was just for
3 mood and I don't know whether Mr. Ramirez of course is currently prescribed anything from
4 County Detention Center.
- 5 DA: But that is something that he could take in the Detention Center.
- 6 JB: Oh yes.
- 7 DA: He does not need to be returned to Vegas ...
- 8 JB: No.
- 9 DA: ... if the Court finds him not competent pending trial.
- 10 JB: No. He doesn't, he doesn't need to-to come to Vegas for that level of medication.
- 11 DA: Judge I'll pass the witness.
- 12 DT: Alright. Whenever you're ready sir.
- 13 BC: Thank you Judge. Uh, you indicated you went to work at the Las Vegas Behavior Institute in
14 May of 2007?
- 15 JB: That's correct.
- 16 BC: And so you've been t here a little less than a year and a half?
- 17 JB: That's correct.
- 18 BC: And you testified in, or you've been qualified as an expert less than 15 times in this State?
- 19 JB: I would think yes.
- 20 BC: And you've only testified as an expert once here in Curry County?
- 21 JB: Yes.
- 22 BC: Now you indicted when Mr. Ramirez first arrived at the Las Vegas Behavioral Institute that was
23 on June 5th, 2008.

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1 JB: That's correct.

2 BC: And that was pursuant to a Court Order treat him to obtain competency?

3 JB: That's correct.

4 BC: But you weren't the first person to see him when he was admitted to Las Vegas?

5 JB: No I wouldn't be the first person to set eyes on him, no.

6 BC: And that would have been Dr. Bagwell?

7 JB: That's correct.

8 BC: And he's the individual that admits patients?

9 JB: That's correct. We have actually started doing joint, not joint, um, our-our admission on a
10 (inaudible) a couple of weeks ago but-but we did have basically he-he admitted them and I
11 would do the evaluations and, uh, all discharges.

12 BC: So in this case he's the one that admitted Albert into the facility?

13 JB: That's correct.

14 BC: And one of the first things he'll do is make a determination if the individual is a candidate for
15 maximum security?

16 JB: That's correct.

17 BC: And in order to be candidate for maximum security you have to be dangerous?

18 JB: No. You just have to be acting-acting out on your admissions, you have to be threatening
19 yourself, to hurt yourself, or threatening to hurt others or actually often the, um, Sheriff or the
20 transport officer will come and say, you know, on the way up he's been saying he's gonna kill
21 you or he's gonna kill, um, da-da-da, and even if-if there's a verbal threat, we just put somebody
22 in maximum security until we can assess them so it's not worth the raise. We're-we're a
23 hospital, we're not a Detention Center, so we only have security staff, they cannot use handcuffs,

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1 they cannot use tasers, they cannot use batons, they-they are, they are maybe they just basically
2 have their-their bulk and their weight behind them and obviously our-our staff, our nursing staff
3 and psych techs, they're not there for, uh, restraint and control purposes.

4 BC: Okay. And in this case, Dr. Bagwell found that, uh, he should not be classified as a maximum
5 security client?

6 JB: That's correct.

7 BC: And he was put in the continuing care unit?

8 JB: Yes.

9 BC: And that's where most individuals are classified and sent?

10 JB: Um, when you have 24 beds in the acute care unit and we have 40 beds on the continuing care
11 unit, our code, generally our census runs at anywhere between 22 on the 24 bed unit, 22, 23; and
12 36 to 39. So to some extent what-what we're governed by, um, where we've got bed space. But
13 we also try and match the individual according to their behavior to the most appropriate unit for
14 them.

15 BC: And in this particular case, when was the first time you met with Albert?

16 JB: Well I met with him the week he was, he was admitted. Um, I was assigned to District Attorney
17 I-I will meet with the, I will meet the individual after admission to put a face and a name, um,
18 together, um, but I met him formally for the purposes of well he approached me probably 2, 3
19 weeks into his stay, asked me when he was gonna be evaluated, um, asked who his psychologist
20 was gonna be, was it going, whether it was gonna be me or somebody else and I, at that point I
21 would have told him it would, his case was allocated to myself and I would be coming to meet
22 him. And then at some point prior, well-well prior to the final kind of evaluation date he asked
23 to meet with me. Um, and, um, I-I agreed. We met for a little while and that was in the, uh,

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1 when the patients were coming back out of their smoke break, we met in the dining room and
2 they were coming in for-for canteen and he was telling me his story and he was very loud and
3 animated and I said Albert this is gonna have to wait, this is not an appropriate place to be
4 talking about everything you've done and what's happened to you, you know, it-it needs to wait
5 till after the guys have had dinner, you know, or we need to go out of the room. So I said, I said
6 can we meet tomorrow and he said yes and I went to see him the next day, uh, with the purposes
7 of-of starting essentially the evaluation really and-and, uh, just hear-hearing what he had to tell
8 me and at that point staff went to his room, he was lying down, just having a rest, and staff went
9 to his room and he refused to come out. And the nursing staff went down and said to him, you
10 know, there's no point hiding, you know, hiding yourself in your room, you're gonna have to go
11 through this process of talking, you're gonna have to, you're gonna be evaluated like everybody,
12 you can't avoid it. So at that point he came out of the room and we met.

13 BC: Okay. So getting back to the question I asked, he, the first time you met with him would have
14 been the week of June 5th, 2008?

15 JB: That's-that's correct.

16 BC: And how long did you meet with him at that first meeting?

17 JB: Oh probably only 10 minutes max.

18 BC: Now in your report you indicated there were sources of information and that would have been
19 the information you were provided from, uh, various different individuals in order to make a
20 determination.

21 JB: That's correct.

22 BC: And some of those, some of those information were Grand Jury Indictments?

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1 JB: Well I also list all the information that we-we are given when a patient's admitted and that pretty
2 much always includes a Grand Jury Indictment, obviously the commitment order, um, any police
3 reports, there's usually a, um, a community evaluator's forensic eval, which there was in this
4 case, and then the medical records that we generate.

5 BC: Okay. Now you testified earlier that there was some records that were sent to you from the jail?

6 JB: It's not record, oh sorry yes that's correct.

7 BC: And for some reason you didn't list those in your report as a source of information.

8 JB: No.

9 BC: And do you know who sent those jail records to you?

10 JB: I don't know the individual's name, no. Basically when somebody comes in they ask them to
11 sign a release, a release of disclosure of information, um, it was, we will zip the release to any
12 prior, um ...

13 BC: You don't know who sent you the information?

14 JB: I don't know who sent that specifically.

15 BC: Now you indicated that your office sent the police reports.

16 JB: Yes.

17 BC: And they consist of approximately 10 pages.

18 JB: I believe so yes there's not-not a huge amount.

19 BC: So the only information about this particular crime was sent to you was 10 pages of reports?

20 JB: Yes. But then the crime itself is not the, is-is not what we do. We-we don't have anything
21 particular we need to do about in terms of looking at crimes. As long as somebody, if
22 somebody's got felony level charges and they have a-a stipulated Order from the Court for
23 evaluation or treatment to competence, that's-that's all we would go on.

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1 BC: And you're aware now that (inaudible) that he was charged with 1st Degree Murder as well as
2 Tampering with Evidence?

3 JB: Yes. It states so on the, um, um, Grand Jury Indictment.

4 BC: And did you ever call the DA's Office to see if there were any more reports involved with the,
5 uh, police case file?

6 JB: No, no I did not.

7 BC: Do you recall if the DA's Office has discussed this particular case ...

8 JB: No I did not. If I, if I called the DA's Office I would automatically call yourself.

9 BC: Okay. And during the process you did, uh, learn that Albert's mother's name was Deborah
10 Ramirez?

11 JB: That's correct.

12 BC: And you were able to call and talk with her on August 18th, 2008?

13 JB: That's correct.

14 BC: And she had told you during the interview with her that Albert had been in special education in
15 elementary school?

16 JB: Yes.

17 BC: And that conflicted with the information Albert gave you?

18 JB: Um, yes.

19 BC: And she also told you he had a problem with alcohol and drugs while in school?

20 JB: That's correct.

21 BC: And she also indicated to you that he was eventually placed in foster care?

22 JB: Well yes. I knew he, I-I asked at what age and I believe that, uh, Mrs. Ramirez did tell me what
23 age because Albert had told me two different ages of being placed in foster care so one of these,

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1 he said 16 and at one point he said 19 and of course he's just 19 so I was quite confused as to
2 when he went into foster care.

3 BC: Was it also reported to you that Albert had been on juvenile probation?

4 JB: Yes. I think Albert did.

5 BC: Did you ever contact the juvenile probation office to see if they had any information as to a
6 history of Albert?

7 JB: No.

8 BC: In-in this particular case you were never provided a copy of the NCIC report involving Albert's
9 prior criminal history?

10 JB: That's correct.

11 BC: And you were aware that he had used marijuana in the past?

12 JB: Yes.

13 BC: And they also reported that he had a history of abusing substances such as marijuana, cocaine,
14 amphetamines and alcohol?

15 JB: Yes.

16 BC: And on page 4 of your report under psychiatric history, you indicate there's no indication from
17 Mr. Ramirez' records has ever required in-patient or out-patient psychiatric information or
18 intervention?

19 JB: That's right. Whenever we received anything to indicate that he'd-he'd been hospitalized prior.

20 BC: Okay. So it is possible that he had been hospitalized prior to this, you received that information?

21 JB: It's possible, yes.

22 BC: And most of the records you received were either the police reports or the Court records in this
23 case?

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1 JB: Yes. And the, and the medical records from the Detention Center.

2 BC: Albert's mother did indicate to you that she had some concerns about Albert's mental health
3 prior to the homicide of her boyfriend?

4 JB: Yes she did. Yes. She said ...

5 BC: She tried to schedule an appointment with mental health resources?

6 JB: I believe so, that's what she did report to me.

7 BC: And for some reason they scheduled her an appointment approximately 2 weeks away from her
8 phone call?

9 JB: I believe so that's what's consistent with what she reported to me.

10 BC: And prior to that appointment that's when Albert was arrested and charged with the homicide?

11 JB: Yes. Yes Mrs. Ramirez was very upset on the phone, um, and, you know, indicated that yes she
12 had some serious concerns about his behavior and-and things he was doing, however, some of
13 the things that you've highlighted, such as the drug and alcohol abuse, could certainly have also
14 resulted in those behaviors occurring.

15 BC: And you indicated that Dr. Bagwell noted during his mental status examination that, uh, Albert
16 maintained poor eye contact?

17 JB: Yes.

18 BC: That his head was bowed down and he would look at the floor?

19 JB: That's correct. On admission, um, you may ...

20 BC: And deficits in both hygiene and grooming?

21 JB: Yes.

22 BC: And at the time he appeared in an unkept appearance?

23 JB: That's correct.

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BC: And he was basically rocking back and forth in his chair and crying?

JB: Yes.

BC: And then Dr. Bagwell indicated that he was unable to assess his thought processes due to Albert's refusal to communicate with him?

JB: That's right.

BC: And he also stated Albert's cognitive abilities could not be assessed at that time due to him being uncooperative?

JB: That's correct.

BC: And at some point in time while Albert was at the, uh, Las Vegas Behavioral Institute he was prescribed Zoloft and Zeitz?

JB: Zeitz, yes they're both for mood stabilizing.

BC: Now did he take one or the other or was he taking both at the same time?

JB: Um, I believe the Zeitz would have been, um, daily and Zoloft may well have been, uh, a PRR, in other words on request.

BC: And those are both to stabilize his mood?

JB: Yes. And try, yes.

BC: And at some point in time when the stay was diminished the million category (inaudible) inventory?

JB: That's correct the MCMI.

BC: And did his responses with the MCMI was rated invalid?

JB: That's right.

BC: And you're aware during the evaluation at some point in time that Albert had reported a history of sexual as well as physical abuse?

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 JB: I certainly remember the physical abuse, um, I think he did mention sexual abuse to me, um, also
2 yes of course he did. He mentioned that both his mom's boyfriend and the neighbor, his mom's
3 neighbor, were gay, um, they had sexually abused him.

4 BC: And during the evaluation you also found out that Albert had difficulty maintaining and
5 managing his behavior?

6 JB: Yes. That's the impulsivity I spoke about.

7 BC: And that would result in his engaging impulsive behavior?

8 JB: Yes.

9 BC: And during the evaluation you were able to come up with an access one diagnosis of mood
10 disorder not otherwise specified?

11 JB: That's correct.

12 BC: And that'd be because that mood order does not meet the criteria for any other specific mood
13 disorder?

14 JB: That's correct.

15 BC: And at times when somebody is diagnosed with a mood disorder not otherwise specified it's
16 because it's difficult to choose between depressive disorder and a bi-polar disorder?

17 JB: Uh, I think it's particular difficult, I mean depressive disorder and bi-polar disorder most bi-
18 polar, most bi-polar disorders starts off with a, with a, not, if it's in the depressive state, um,
19 people would be often given a diagnosis of major depressive disorder until they cycle back out of
20 the depression and then end up into the more manic state where psychiatrist, the psychiatrist
21 who's treating them will realize that it's bi-polar disorder but mood disorder, anarres, is really
22 it's a, it's a catch all. It's a catch all for any individual who's showing a lot of mood lability but
23 the actual specific reason for that might not be known so you may get a mood disorder anarres,

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 um, following probably substance dependence or probably substance abuse until those-those
2 substances are flushed out of the system and then the mood disorder may-may stabilize or go
3 away but it is a bit of a catch all that can be used for a number of, um, different, um, emotional
4 states as I say mainly for anybody who's showing mood like lability, so if, you know, going in
5 and out of maybe a depressive mood or-or going from anxious to depressed or back to anxious
6 again.

7 BC: And so his mood disorder could be caused by the abuse of controlled substances?

8 JB: Given that, well I can't speak for Detention but given that during the time that, um, he spent with
9 us, for the three months, he was certainly not able to access any illicit substances either drugs or
10 alcohol, um, it, that-that-that it's pretty unlikely that his mood disorder would have lasted to that
11 period of time if it had been the result of substance dependence or substance abuse.

12 BC: So then his mood disorder would have to have been caused by something other than substance
13 abuse?

14 JB: Yes. Maybe not have to but most likely.

15 BC: And during the evaluation of Albert, approximately how many times did you meet with him?

16 JB: For the actual formal evaluation, I believe 4.

17 BC: And approximately how much total time did you spend with him while he was in Las Vegas
18 Medical Center?

19 JB: Personally I would imagine prob, I would say probably around maybe 5-6 hours total.

20 BC: And during that time did you find that his communicative abilities were very well?

21 JB: Um, I don't, it depends on, there's a definition of very low. He's not a great communicator, he
22 tends to be, um, very pressured in his speech, tends to want to tell you a lot and repeat a lot of
23 things over and over again. Um, but he-he's not incapable of communication and he-he can, he

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 can find, he's word finding. He doesn't have any word finding difficulties or any problems with
2 aphasia, uh, or understanding, he just tends to be very pressured and want to tell you things very
3 quickly and over and over again.

4 BC: Did he indicate the questions asked so would have to be fairly basic and simple?

5 JB: I think it-it's-it's valuable to him if they're-they're simplified.

6 BC: So essentially he doesn't understand lengthy and complex questions?

7 JB: Well I don't think I asked any lengthy or complex questions so I don't know that I can comment
8 specifically on-on his, um, ability. I mean in a 90 day (inaudible) I would have done a cognitive
9 assessment, a full cognitive assessment, for race for like (inaudible) assessment but when
10 somebody is not put in full effort and is vested in not being competent and not, they-they won't
11 cooperate and you won't get a true, uh, picture of their actual abilities which is why I didn't do
12 any further psychometric testing.

13 BC: And because of that he won't have the ability to testify on his own behalf at trial if he was called
14 upon to testify?

15 JB: Because of what?

16 BC: His inability to communicate.

17 JB: Well I don't think he's unable to communicate, I think he's-he's-he's certainly able to
18 communicate. As I said no weird finding difficulties, he's no aphasic, he doesn't have any
19 specific speech problems so I don't think he's not able to communicate.

20 BC: Because of that mood disorder would he be able to handle the stress of testifying?

21 JB: I believe so.

22 BC: Okay. And did you find out what the highest grade that Albert attended when he went to school?

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 JB: I think I asked. I'd have to go back and find, look at my notes, ... let's see if I can ... I don't
2 think, if Albert did not tell me that he attended past junior high so I was quite confused as to
3 actually what, at what point he remained in school. His timeline was-was not very well
4 described in terms of what happened to him when and he would tend to change his, um, change
5 his, uh, story on occasion.

6 BC: And you didn't request review of school records?

7 JB: No I didn't.

8 BC: Did you measure any intelligence tests on Albert?

9 JB: No. I explained my reason for that just a moment ago.

10 BC: And was he given any neurological examinations while at the Behavioral Institute?

11 JB: No we didn't send him for an MRI or a CT, there was no, uh, no-no reason, there's no history of
12 trauma brain injury at all. Um, long term drug abuse that might have resulted in cortical atrophy
13 or anything similar so he wasn't sent for any neurological exam.

14 BC: And would you agree that Albert has a dysfunctional personality style?

15 JB: Yes.

16 BC: And that could give him difficulty in rationally and factually assisting his attorney in his
17 defense?

18 JB: They could give him difficulty but personality style is to-to a degree, um, voluntary. Um, there
19 is volition in there so I don't think, I think that-that he can voluntarily, uh, attend or not and work
20 with you or not and I think it is an element of-of choice in there.

21 BC: And at some point during your interview with Albert you asked him if he had read the police
22 reports?

23 JB: Yes.

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 BC: And he indicated that he had not and did not want to.

2 JB: That's correct.

3 BC: Was he ever able to remember anything about the, uh, charges, well the shooting of his mother's
4 boyfriend?

5 JB: He was able to remember. In fact we tend not to, um, ask specific details about the, uh, charges
6 because obviously it could be prejudicial to the case so we don't go into, we say do you
7 remember what happened; the individual will say yes or no, um, but what do the police reports
8 say that you did because obviously they're approved judication so we're not making assumption
9 of guilt or innocence up there. Um, so we just say what did the police report say and obviously,
10 um, we would encourage somebody to read the police report if they haven't. Um, but clearly
11 some people don't want to go there.

12 BC: Was he able to tell you what was in the police reports?

13 JB: Um, let me look at my IRCNI and I can tell you exactly. Um, no so what does the police report
14 say you did? I have not read it and I don't want to read it. What lead the police to arrest you and
15 what did you say to them? I said nothing. Did you confess? Nothing to say. Um, and then what
16 do you say happened? And he said I want to speak to Brett Carter.

17 BC: Okay. And you indicate a present in order to prevent a deterioration in his mood related
18 symptoms and he needs to remain on his medications.

19 JB: I don't actually know if-if Albert is currently on medications at Detention, we would always
20 recommend that when somebody leaves us and goes back to Detention that they do stay, if
21 there's medications that have been helpful for them, but obviously we can't speak on behalf of
22 what, uh, formally each Detention Center has.

23 BC: Okay. Would those medications affect his ability to stay alert in Court?

• State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 JB: Not at the doses that he was on.

2 BC: Okay. And would they affect his ability to communicate in Court?

3 JB: No they should not. They should, if anything, improve his ability because he should be a little
4 bit calmer.

5 BC: Okay but at present we don't know if he's been given those medications at the jail?

6 JB: That's correct. He-he was, he was prescribed Zoloft prior to his arrival at Vegas, so certainly I
7 know that County has that one so I would hope that he's remaining, or that they're remaining on
8 it. They may have, however, made a decision in the, um, medical facil-facility here that they
9 don't think he requires them I don't know.

10 BC: And you indicated in your direct examination that Albert was a disturbed young man?

11 JB: Yes.

12 BC: That there was no evidence of traumatic brain injury?

13 JB: Not that I'm aware of.

14 BC: But there were no neurological tests conducted on him?

15 JB: There were no neurological tests. I said, normally the neuro-neurology would be send him for
16 CT and an MRI and/or an MRI and potential neuro-psychological, a full neuro-psychological
17 evaluation with a battery of psychometrics and that wasn't warranted in this case.

18 BC: And you indicated because of his mood disorders and personality style Albert would be a
19 difficult person to manage?

20 JB: Yes. I think that's evidenced through his history.

21 BC: Judge at this time I don't have any other questions for this witness.

22 DT: Any follow-up?

23 DA: No Your Honor.

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 DT: Let me see if I have anything. Any further evidence or statements?

2 DA: No other evidence Your-Your Honor.

3 DT: Janell.

4 DA: No other evidence.

5 DT: Alright you have any evidence you'd like to put on?

6 BC: Not at this time Judge.

7 DT: Which time would you want to? I didn't mean next time I came out, you had any statements?

8 BC: Nothing not for the purpose of this hearing Judge.

9 DT: Okay, alright. I apologize I made that sound bad. Are we through? Statements?

10 DA: I just, uh, statements.

11 DT: Statements?

12 DA: A few statements. Judge, uh, we feel that the State has proven by clear and convincing evidence
13 that the defendant is competent to stand trial. It appears he has a mood disorder, he does not
14 have a mental ill-illness, um, the testimony's clear he is feigning and malingering psychiatric
15 symptoms so he doesn't have to go to trial. This is clear from the tests that were performed if the
16 Court recalls the SIMS tests, a 14 or greater suggestive of symptom exaggeration, he's a 47.
17 And the other test was invalid due to his over-endorsing of things. Um, he understands his
18 charges and the potential consequences, he understands the trial process, he can rationally assist
19 his attorney, there was testimony he could handle the stress of testifying, uh, he even asked for
20 his attorney when being questioned at Las Vegas which shows he can assist his attorney, um, if
21 anything the testimony has been that he's just going to be a little difficult because of his
22 personality style and that, the testimony was that that's an element of choice. So I believe Your

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 Honor that there's been no other evidence that, um, he is not competent to stand trial at this time
2 and at this time we would ask the Court to find him competent and move this matter forward.

3 DT: Mr. Carter.

4 BC: Judge the State has to provide evidence that would either show to you by a preponderance of
5 evidence a clear and convincing evidence that he's competent to stand trial and the Court entered
6 an Order that he could be treated for up to a period of 9 months. In this case we still don't
7 believe he's able to assist his attorney in his defense under the UJI that, uh, governs the three
8 elements which are required for competency under 14-5104, the third element is able to assist his
9 attorney in his defense. Judge in this particular case, there were no neurological tests conducted,
10 school records weren't reviewed, the probation office was not contacted to determine if there
11 was any sort of prior history other than substance abuse in this case, they indicate that at least
12 right not because of his mood disorder that he should be on medication, we don't know if that
13 medication was being given to him or that he's even taken it while he's at the jail. They've
14 indicated to us Judge through the testimony that the questions proposed to Mr. Ramirez would
15 essentially have to be simple and concrete, this is not a charge such as shoplifting where the
16 evidence is gonna be pretty self-explanatory, it's a homicide charge that we would involve expert
17 witnesses, I'm sure they're gonna have firearm's experts, other types of experts, I just don't think
18 at this point in time that Albert because of his particular disorders has the ability to assist his
19 attorney in his defense. Now obviously he did attend classes while there at the Las Vegas
20 Medical Center, they have made progress and are working with him, uh, through those group
21 sessions, Judge we would ask that he be sent back to Las Vegas Medical Center maybe they can
22 provide those neurological tests and work with him, work on getting him stabilized on the

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

1 medication so that he would be able to assist his attorneys in his defense. And Judge I think
2 you've got the report that's been admitted into evidence and so.

3 DT: Alright I appreciate the-the dilemma that counsel always has in a case like this so.

4 BC: Thank you Sir.

5 DT: Uh, what I'll do is I will take the, uh, the reports and the entire file, I'll, in fact I'll read those this
6 afternoon and have you an answer first thing in the morning so we'll know where we're going.

7 BC: That'll be a letter decision Judge or some sort of ...

8 DT: It's gonna send you either, yeah I'll just dictate a short, a real short decision and fax it to you in
9 the morning.

10 BC: That's fine Judge.

11 DT: And we won't, we won't ...

12 DA: And Judge the Court is aware we are dealing with two numbers, just so that we can, um, CV
13 2008-296, um, which is a Battery on a Peace Officer a matter that was joined with this, uh, for
14 competency and then of course the ...

15 DT: 434.

16 DA: Yes.

17 DT: Okay.

18 DA: The Court is aware of that?

19 DT: Alright. Thank you. We may reset.

20
21 END
22
23

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Competency Hearing

STATE OF NEW MEXICO
COUNTY OF CURRY

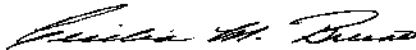
Case No. D-202-CR 2007-00434

STATE OF NEW MEXICO,
Plaintiff,
v.
ALBERT RAMIREZ,
Defendant.

CERTIFICATE OF TRANSCRIPTION

I, the undersigned legal transcriptionist, DO HEREBY CERTIFY, that the foregoing transcript is a true and correct record of the Competency Hearing as transcribed by me. The above-noted statement was transcribed to the best of my ability from a cassette and/or digital recording supplied by defense counsel.

I, FURTHER CERTIFY, that I am not related to any of the parties or attorneys in this case and I have no interest whatsoever in the final disposition of this case in any court.



Cecilia M. Bruno

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

08 SEP 16 PM 3:59

STATE OF NEW MEXICO,

Plaintiff,

vs.

ALBERT JOSE RAMIREZ,

Defendant.

No. D-0905-CR-0200700434

No. D-0905-CV-0200800296

ORDER

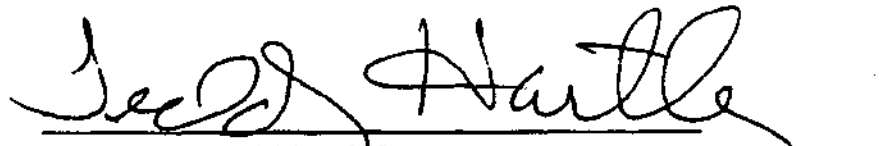
THIS MATTER having come before the Court for a competency hearing on the 15th day of September, 2008, the State being represented by Matt Chandler and Andrea Reeb; the defendant being present and represented by Brett Carter and Chandler Blair; and the Court being advised in the premises, FINDS:

An Order for Commitment to the New Mexico Behavioral Health Institute at Las Vegas for Treatment to Attain Competency to Stand Trial was filed with the Court on April 17, 2008. This was a stipulated Order based on a finding of incompetency by Maxann Shwartz, Ph.D. suggesting that the defendant be treated to competency.

On August 19, 2008, this Court received a report from the New Mexico Behavioral Health Institute at Las Vegas opining that this defendant was competent to stand trial.

A hearing was had thereon with live testimony from Dr. Joanne Burness of the New Mexico Behavioral Health Institute at Las Vegas. After reviewing the documents and hearing the testimony of Dr. Burness, this Court is of the opinion that the defendant, Albert Jose Ramirez, is now competent to stand trial.

This defendant shall be held in the Curry County Detention Center without bond pending trial.


TEDDY L. HARTLEY
District Judge, Division III

**IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY**

WINT-
CURRY COUNTY NM
FILED 01/22/25

2025 JAN 13 PM 3:34

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

ALBERT RAMIREZ,

Defendant.

434

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State Of New Mexico from presenting testimony of Dr. Joanne Burness and for cause would state;

1. Counsel for defendant filed a motion to determine competency of the defendant. The defendant was at the time found to be currently incompetent to stand trial. The defendant was ordered to be transported to the Las Vegas Medical Center to be treated to competency.
2. The defendant was evaluated by Dr. Joanne Burness while at the Las Vegas Medical Center. That same doctor is now listed as a witness for the state.
3. Any statements made by defendant to Dr. Burness were made while the defendant was undergoing treatment or during the course of a mental examination pursuant to court order.
4. NMRA- Rule 5-602E. states, "A statement made by a person during a mental examination or treatment subsequent to the commission of the alleged crime shall not

RP 268

Exhibit M

be admissible in evidence against such person in any criminal proceeding on any issue other than that of the person's sanity, ability to form specific intent or competency to stand trial."

5. The testimony of Dr. Burness is not admissible unless and until the defendant presents a claim of lack of specific intent or insanity to the jury.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any statements made by defendant to Dr. Burness at trial and further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: Brett J. Carter
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.

Brett J. Carter
PUBLIC DEFENDER DEPARTMENT

RP 269

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

2011 SEP 22 AM 9:27

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

(Nos. CR-2007-434 &
CR-2008-748)

Defendant.

MOTION FOR MENTAL EVALUATION

The Defendant, through counsel, pursuant to § 31-9-1 et seq. NMSA (1978) and S.C.R.A. 5-602 or S.C.R.A. 6-507, if the case has not yet been bound over, moves the Court for an order directing the H.E.D.'s contract psychologist to perform a confidential evaluation of the Defendant to determine her:

- X A. competency to stand trial
 X B. sanity

As grounds for relief, it is stated:

1. The Defendant is accused of a crime and has been determined to be indigent;
2. There exists a reasonable doubt as to the Defendant's competency to stand trial or sanity at the time of the alleged crime;
3. The basis for questioning competency/sanity is as follows: previous issues with regard to competency, in addition to current concerns based on counsel's review of the file and indications from the Defendant's actions at the last hearing wherein he was represented by N.M. Public Defender Brett Carter.

Exhibit N


RP372

4. A mental examination is needed to determine whether the Defendant is competent to stand trial or enter a plea in this matter.

5. A confidential assessment of insanity is needed to assist counsel in effectively representing the Defendant in this matter.

WHEREFORE, the Defendant's counsel moves the Court for an order for a mental examination as requested herein and for such other, further and different relief as the Court deems just and proper.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant
P.O. Box 3330
Roswell, New Mexico 88202-3330
(575) 625-0516

I hereby certify that I did mail/hand-deliver/fax on the 22 day of September, 2011, a copy of the foregoing pleading to the opposing party(ies).



JESSE R. COSBY

SEP/21/2011/WED 04:06 PM jessie cosby atty.

FAX No. 575625004

P. 002

NINTH JUDICIAL DISTRICT
CLERK
FILE

2011 SEP 26 PM 3:45

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICTShirley J. Smith
CLERK

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

Nos. CR-2007-434 &
CR-2008-748

Defendant.

**EX PARTE ORDER FOR CONFIDENTIAL
FORENSIC EVALUATION**

THIS MATTER, having come before the court on Motion of counsel for the Defendant for an evaluation pursuant to NMSA 1978, Sections 43-1-1 and 31-9-1.1, and the Court being fully advised and finding good cause for the motion;

IT IS HEREBY ORDERED:

1.) The Department of Health shall perform a confidential forensic evaluation of the defendant for defense counsel on such issues as defense counsel specifically raises and believes are likely to be a significant factor in the defense. A report of the evaluation shall be prepared. The report shall be trifurcated: Issues regarding competency to stand trial shall be reported separately from all other issues; issues related to sanity and specific intent shall be reported separately from all other issues; and all other issues shall be reported in a third report.

2.) It is understood that the Secretary of the Department of Health has designated local contractor, _____, to perform the evaluation. Defense counsel shall serve this order upon said local contractor and this shall be service upon the Secretary as required by § 43-1-1 NMSA (1978).

Exhibit D

RP 374

SEP 21/2011/WED 04:07 PM jess cosby atty.

FAX No. 5756254

P. 003

3.) The results of the examination are confidential and the Department of Health shall not disclose the results to anyone other than defense counsel. A copy of the competency report shall be provided to the District Attorney's Office and the District Court and labeled as confidential.

4.) The Department of Health's contractor shall complete a report within sixty (60) days of being served with the Order and shall notify the Court and all parties as soon as the evaluation is complete.

5.) Rules 5-502 and 5-602, NMRA, 1998, govern disclosure relating to any evaluation conducted.

6.) Pursuant to NMSA 1978, Section 31-9-1.1, a hearing to determine an incarcerated Defendant's competency to stand trial shall be held within thirty (30) days (if the incarcerated defendant is charged with a felony) and within ten (10) days (if the incarcerated defendant is not charged with a felony) of notification to the Court of completion of the forensic evaluation.

IT IS SO ORDERED.


Teddy L. Hartley
District Judge

Submitted by:


Jesse R. Cosby
Attorney for Defendant

RP 375

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

2012 03 15 PM 3:56

STATE OF NEW MEXICO,

Plaintiff,

v.

No. CR-2007-434✓
CR-2008-748

ALBERT JOSE RAMIREZ,

Defendant.

**ORDER FOR FURTHER
FORENSIC EVALUATION
AT NEW MEXICO BEHAVIORAL HEALTH INSTITUTE**

This matter came before the Court at a status hearing on March 9, 2012 regarding a forensic evaluation of the Defendant and to have the Defendant evaluated by New Mexico Behavioral Health Institute as recommended by the contract HED psychologist. The State did not oppose this relief if New Mexico Behavioral Health Institute can be ordered to do the evaluation.

The HED contract psychologist recommends this relief due to an inability to express an opinion on competency/sanity due to the Defendant's unwillingness and/or inability to participate in the evaluation.

A transport order for the Curry County Sheriff's Office to transport this Defendant to the New Mexico Behavioral Health Institute for this evaluation shall issue forthwith.

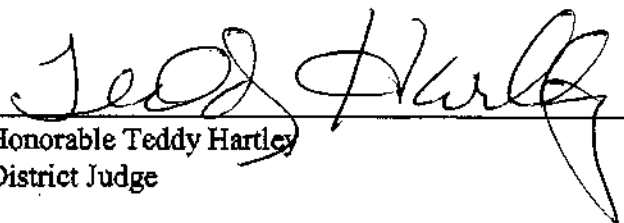
New Mexico Behavioral Health Institute shall conduct a competency evaluation and sanity evaluation of this Defendant and report its findings as to competency to the Court and counsel for the Defendant. The report as to sanity shall be provided to the Court and the defense but not the State.

The defense, if it intends to assert defenses of competency, insanity or mental illness, shall provide New Mexico Behavioral Health Institute's reports to the State.

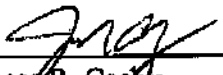
Exhibit P

RP384

IT IS SO ORDERED.


Honorable Teddy Hartley
District Judge

Submitted by:


Jesse R. Cosby
Attorney for Defendant

Approved by:

telephonically approved 3/12/12
Andrea Reeb, Esq.
Assistant District Attorney

RP387

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

2012 MAR 15 PM 3:56

STATE OF NEW MEXICO,
Plaintiff,

v.

No. CR-2007-434 ✓
CR-2008-748

ALBERT RAMIREZ,
Defendant.

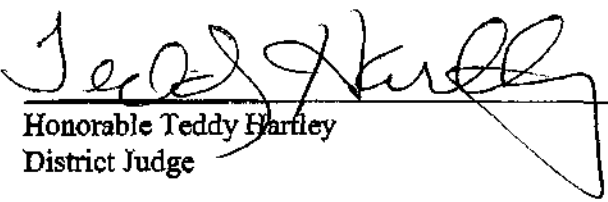
**ORDER TO TRANSPORT TO NEW MEXICO
BEHAVIORAL HEALTH CENTER FOR FOLLOW-UP EVALUATION**

Upon Motion of the Defendant, following a hearing thereon, and upon review of the record,

IT IS ORDERED the Curry County Sheriff's Office shall transport the Defendant to the N.M. Behavioral Health Center at Las Vegas, New Mexico, on or before the 30th day of March, 2012, for a competency and sanity assessment as recommended by the HED's contract psychologist, Dr. Richard Fink.

IT IS ORDERED that the N.M. Behavioral Health Center shall receive the Defendant for said evaluations, even if a bed is not available, or shall show cause to this Court why they refuse to accept the Defendant.

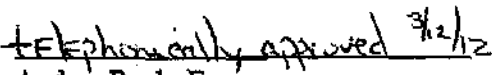
IT IS SO ORDERED.


Honorable Teddy Hartley
District Judge

Submitted by:


Jesse R. Cosby
Attorney for Defendant

Approved by:


TELEPHONICALLY APPROVED 3/12/12
Andrea Reeb, Esq.
Assistant District Attorney

RP388

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

2013 MAR -1 PM 3:54

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,


No. D-0905-CR-0200700434


Defendant.

STIPULATED ORDER ON COMPETENCY

THIS MATTER having come before the Court, by way of stipulation of the parties, the State represented by Andrea R. Reeb, Chief Deputy District Attorney, and the defendant represented by his attorney, Jesse R. Cosby, Attorney at Law, and said parties having stipulated to the report dated 1-17-13, from Dr. Richard T. Fink, Ph D; the parties agree that the Defendant is competent to stand trial in this matter;

IT IS HEREBY ORDERED that Defendant is competent to stand trial in this matter, and that a jury trial shall be scheduled.


Andrea R. Reeb
Chief Deputy District Attorney


TEDDY L. HARTLEY
DISTRICT JUDGE, DIVISION III


Jesse R. Cosby
Attorney for Defense

D.A. No. 11-0539 MC/jwg

Exhibit Q

RP405

- State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/9/13 CD B 10:16 – 19:17:00

2 JC: Your Honor I'm compelled at this time to move the Court for a recess to evaluate the
3 competency of my client, uh, go ahead and sit down. I have attempted during the break to speak
4 to him regarding his issues. He has, uh, told me he didn't understand, that he doesn't know how
5 to behave, he doesn't know why I tell him that he needs to sit up and that the Jury's watching
6 him. What I'm talking about, he's indicated that he's, uh, not capable of assisting me at this point
7 on his defense. Um, I would have to move the court in light of these reports as you know he, it's
8 been determined once before not to be competent to stand trial, he was sent up to Las Vegas for
9 treatment, they determined, uh, in your opinion that he was malingering and returned him with a
10 recommendation to be found competent to stand trial, however, they made, uh, recommendations
11 that he continue on his medications because his ability to assist counsel was, uh, brought in
12 question and that, uh, without medications that he had some issues there.

13

Exhibit R

- State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/8/13 CD B 8:42:10 – 8:43:50

2 MC: Thank you Judge. Um, it was to the State's attention this morning just prior to, uh,
3 approximately about 8:20 or so this morning that the defendant made, uh, several spontaneous
4 statements and comments, uh, to the transport officers yesterday at the conclusion of trial. Uh,
5 we believe that those statements are, um, statements that we intend to possibly introduce to the
6 Jury. Um, the individuals, the transport officer that gave the information to me, I advised them
7 that they needed to document it in a report and provide one to myself and the defense. So in
8 light of that there are new, um, transporter or detention officers in here today since those are, the
9 other two are gonna be potential witnesses. It was brought to the State's attention that the
10 defendant advised both of the transport officers that, um, he shot the man, um, but he was more
11 concerned about the tampering, he didn't want to, the (inaudible) because it would cause him to
12 get out at 55 instead of 53 or something of that nature, 52, is they're gonna document it. But I
13 just wanted to put the Court and defense on notice that we do intend to-to based on the
14 testimony.

15

Exhibit-S

- State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/9/13 - 10:23:45 – 10:25:05

2 AR: I was at the hospital, I was participating and I was taking my meds and a guy threw coffee in my
3 face and started punching me, he gave me a black eye and I called, uh, (inaudible), he gave me a
4 number to call a lawyer, I called him and then after that they shipped me straight over here and
5 then I was crying so much cause I was chronically depressed because I'm physically (inaudible)
6 from my neck down and I'm depressed about what happened, what's happening in my life and I-
7 I don't know how to act around people and I don't want to talk to people and everybody gets
8 mad at me cause I don't know how to act, like I'm 18 years old, I act like I'm a little kid and they
9 shipped me over here and I didn't know what she was saying cause I was crying and I would
10 have said something back then and then the only time I found out was when I seen it on paper
11 that they said I wasn't cooperating, malingering but I was cooperating and then after they sent
12 me to prison they diagnosed me as schizophrenic and I told them that I, uh, I did hear voices
13 sometimes and I told them that I was suffering from physical illness which is psychosomatic
14 delusions cause I thought I had a terrible physical illness, that I was disabled from my neck
15 down, I've been asking for medical attention and they keep denying me and I've been asking for
16 a wheelchair cause my left leg is an inch and a half shorter than my right leg and I'm in chronic
17 pain all, anything I do, I can't do daily tasks and I-I think Mr. Cosby gets mad at me cause I
18 don't know how to talk to him and I'm scared that he might lose my case because I made at me
19 or something.

20 10/9/13 CD B 10:24:94 – 10:25:58

21 MC: Um, there is a case State of New Mexico versus Karess, uh, where this Court has the ability if the
22 defendant disrupts trial to remove the defendant, um, but I think it's important that he be placed

Exhibit-T

- State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 on notice that if he does disrupt he can watch his trial from, uh, video satellite but, uh, the trial
2 Court needs the discretion to control and properly administration of criminal justice and may
3 remove a defendant whenever circumstances so dictate so. I'm not asking for that to happen but
4 I think it's important for all of us to know that that's an option.

5 JC: Removal of the defendant has to be because he's behaving intentionally, willfully disrupting but
6 and if he's got a medical problem it's making him unable to cooperate and is not intentional,
7 there wouldn't be a justification for removal from the Courtroom. It puts the problem squarely
8 before us. I've got a client here who is obviously going to, uh, continue to cry, uh, not be
9 communicative, not be able to assist me right now in his defense and I feel that that's possibly
10 from some reason other than simply malingering. Now he is fixated on this medical situation of
11 having one leg shorter than another, he is continuing to-to fixate on that and nothing to do with
12 trying to come up with a defense but it shows perhaps that he has a medical mental health
13 problem and if he cannot get aside from that he can't assist me effectively in his own defense
14 today which is why we've made this motion. Thank you for your ruling.

15

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/9/13 1:35:36 -1:44:46

2 AR: I-I ate a sandwich but early on I was crying a lot, um, I haven't been taking my psyche meds,
3 um, compared to my schizophrenic and, um, ...

4 JC: You sound very competent.

5 AR: I've been hearing, uh, I hear voices telling me to cut my wrists, apparently so kill myself and I
6 just got off suicide watch when I was Hobbs, I was attempting to kill myself and I've been
7 severely depressed and, um, unable to control my emotions and they end up putting me in a pod
8 where I could be alone so I could try to feel better cause I'm (inaudible) a lot of mental illness
9 (inaudible) illness and, um, they, I talked to the psych trying to Los Lunas, um, MHCC, Mental
10 Health Treatment Center, to see if they could help me with mental issues and-and, um, my
11 physical issues as well to LTCU, um, treatment care unit, and, uh, I-I just, that's why I was
12 crying a lot cause when I hear voices and they tell me kill myself it makes me feel like I-I don't
13 want to live and there's other issues in my life that make me not want to live as well and I just
14 wanted to say that.

15 DT: Okay I understand.

16 AR: Give me my meds.

17 DT: I understand that you're depressed, I-I can understand that. Just keep-keep yourself together till
18 we get through then you can say whatever you need to and be in touch with your lawyer, he's-
19 he's doing a good job for your, he's-he's not mad at you like you thought earlier, he's not mad at
20 you. (1:30:06)

21

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

I 10/9/13 CD B – 2:41:40

2 DT: Do or do not testify they say is permissible in the court. If you make the decision to testify fine.
3 If you don't, well nobody's gonna know about it.

4 AR: I don't know, I don't know what to do.

5 DT: Well the truth is, nobody knows what to do in your situation sir. That's a...

6 AR: I don't know if I should testify or not cause I got a lot of stuff that I don't want to talk about and
7 I want to ask, um, like I-I don't think I'm mentally balanced caused of my mental issues and like
8 sometimes I just cry for no, like out of like-like at strange times, like I cry all the time and, uh, I
9 cry like and if they're watching me in the County but the CO's who know about this have to
10 watch me but I-I want to ask can-can, um, the jury know that, um, I have, um, I'm schizophrenic
11 and, um, I'm severely depressed and I do take psych meds and I'm on my psych meds and, um,
12 I'm physically disabled from my neck down and, um, my spine's crocked and my left leg's an
13 inch, an inch and a half shorter than my right leg and I have time just, um, sitting up or standing
14 and walking doing anything and, uh, I-I do hear voices and I'm still suffering from psycho-
15 somatic delusions. The-the physical doc, the medical doctor says I'm-I'm physically, um, he
16 says that my leg's shorter than my other leg and my spine's crocked and then the-the psych says
17 that I'm suffering psycho-somatic delusions and I might be a hypo-hypochondriac and then I
18 keep going back to, they send me back and forth so I'm real confusing, it's making me really
19 frustrated and I'm-I'm confused and, um, I want to see if the jury can know about this cause I
20 start acting weird and,uh, I just, I have a lot, I have a lot of things I need help with and, um, like
21 you said earlier that you said that I was malingering and somebody says that I was malingering
22 and I think the DA said I was malingering or something but nobody ever looked into anything

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 that's happened to me because I told them about whenever like they said that I got violated at the
2 hospital, well I got a lawyer, a statement that says that I got attacked at the hospital. I got beaten
3 up and that's when they sent me back right away and then that lady got on the stand and-and she
4 said whatever she said so she wouldn't send me back to the hospital and I feel like it's not fair to
5 me. I feel like I'm the underdog like (inaudible). I feel like I'm the underdog because I got , uh
6 ...

7 DT: Mr. Ramirez let me, let me, let me, let me, let me, let me let you know that we've listened to you
8 and-and it's fine for you to express yourself. The issues that are concerning to me are personal
9 and they are of concern to you but they, we don't believe or I don't believe they-they rise to the
10 point of affecting this trial so the trial's gonna go on. Whatever happens to you after this,
11 you're-you're-you're not gonna be excluded from treatment or whatever it is so-so, uh, we're
12 gonna continue ...

13 AR: Yeah I've been excluded from treatment. I still haven't got treatment.

14 DT: We're gonna, we're gonna ...

15 AR: They said that ...

16 DT: ... wait a minute, wait a minute we're gonna go on with the trial and then you take whatever, uh,
17 counsel you can from your lawyer as to whether or not you want to testify. Other than that we're
18 not gonna, we're not gonna talk about any further okay?

19 AR: I feel like, I feel like, um, I feel like everybody's against me cause you all offering, um, the State
20 versus Albert Ramirez, I offer the State of New Mexico I feel like they're all against me, you all
21 ain't my family, you all ain't my friends, you all don't know me, so you all don't even care about
22 me and ..

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Excerpts from Transcript

1 DT: Yeah that's that nature of ...

2 AR: ... You know, I ain't getting fair treated because Maxine said all ...

3 DT: That's the nature of the treatment son.

4 AR: Even Matthew Towner, last time I was here in Court I was crying hysterical and he said Albert is
5 hysterical, he-he-he-he can't even function and you all still went to trial and then this time, um,
6 I'm-I'm not again treated fairly, I'm not but it's okay because, um, that's-that's what you all
7 want to do because I feel like, um, I'm-I'm fighting for my life cause I want to be a productive, I
8 want to be a productive citizen for society, I want to be out in the community of Clovis and I-I
9 want to help people too.

10 DT: Okay.

11 AR: And-and, um, I feel like, um, you all are just trying to make careers and-and getting rich off,
12 getting rich while I'm-I'm in prison suffering ...

13 DT: Alright, alright. That's enough, that's enough son. That's enough.

14 AR: You just wanted me to suffer and I'm not gonna get no medical help, I've been asking for
15 medical help or for mental health and I'm just, I'm confused.

16 DT: We'll be in recess, we'll take back up in about 5 minutes.

17 DT: The Court heard motion and statements there on by Mr. Cosby on behalf of the defendant
18 concerning the, uh, uh, to move the motion of ability of his client at this juncture to continue. In
19 that connection I want to read from the file in this case, uh, which touches on this issue. The
20 defendant was arrested on July 15th, 2007 and charged with 1st degree murder and 2 counts of
21 tampering in this case. Shortly thereafter the defense counsel filed a request to have the
22 defendant evaluated to determine if he was competent to stand trial. The defense hired Dr.

- State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 10/9/13 CD B 10:16 – 19:17:00

2 JC: Your Honor I'm compelled at this time to move the Court for a recess to evaluate the
3 competency of my client, uh, go ahead and sit down. I have attempted during the break to speak
4 to him regarding his issues. He has, uh, told me he didn't understand, that he doesn't know how
5 to behave, he doesn't know why I tell him that he needs to sit up and that the Jury's watching
6 him. What I'm talking about, he's indicated that he's, uh, not capable of assisting me at this point
7 on his defense. Um, I would have to move the court in light of these reports as you know he, it's
8 been determined once before not to be competent to stand trial, he was sent up to Las Vegas for
9 treatment, they determined, uh, in your opinion that he was malingering and returned him with a
10 recommendation to be found competent to stand trial, however, they made, uh, recommendations
11 that he continue on his medications because his ability to assist counsel was, uh, brought in
12 question and that, uh, without medications that he had some issues there.

13

Exhibit U

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/9/13 CD B 10:18:36 – 10:24:04

2 MC: Judge, um, we object, um, to-to that at this time. There's no good faith basis for it other than
3 relying on, um, Albert Ramirez' word which to correct Mr. Cosby he has not been found
4 incompetent ever. He would not participate the first time so they sent him to Vegas for further
5 observations. The report came back that he's malingering, he's a fake. Um, then he went and
6 Jess Cosby asked for a second evaluation. The second evaluation came back that he's a fake, he
7 fakes this stuff, um, just like he faked it this morning that he's not feeling good or he's sick,
8 came here and told the Court that he wasn't seen by a nurse and for purposes of the record
9 because that was on the record this morning, a note came back and a nurse did see him. He said
10 he's fine and Judge, you know, he can do this and say this but there has to be a genuine good
11 faith basis, there's no diagnosis for him, he's been seen by psychiatrists that have given reports
12 to this Court that he is feigning his-his ...

13 DT: Right.

14 MC: ... mental illness and we've seen it numerous times throughout this proceedings and here we are
15 6 years later, uh, and I, and I don't think there's a good faith basis pursuant to the rule to, um,
16 allow an evaluation at this particular time. The rule says there must be a good faith basis.

17 JC: Judge under, um, Maxine Schwartz, PhD's report to the Court dated 3/14/2008 the very last page
18 of which, uh, reflects another, I think in the last paragraph other than thanking you for referral, it
19 is therefore the opinion of this examiner that Mr. Albert Ramirez is not competent to stand trial.
20 So there has been a medical professional to determine that in her opinion the gentlemen is not
21 competent to stand trial, I'm not making this up out of (inaudible)

22 DT: I understand and I-I ...

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Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 JC: And made a finding I believe that he was not competent which is why he got referred to Las
2 Vegas. Now it's my understanding, I wasn't his lawyer.

3 MC: That was based on the fact that he wouldn't participate with her.

4 JC: No. Maxine reports that she just went on the theory, anyway. Please would you, this is the
5 problem we are having.

6 DT: Counsel .

7 AR: I got beat up by somebody that worked out there. They beat me up and that's why they sent me
8 back with those charges sue him and that's why they sent me back, said I was lying and stuff ...

9 DT: Sir you'll have to, you'll have to be quiet. You'll have to be quiet. I understand your concerns
10 of-of Mr. Cosby, however, the-the trial is long, he's been evaluated and-and there's significant
11 information in there that suggests that he is a malinger, uh, I'm not an expert and my observation
12 this morning would say that he is a malinger. I hesitate, uh, to stop this trial at this juncture, how
13 much more testimony do you have sir?

14 MC: Judge we have a ballistics expert, we have a DNA expert, um, based upon issues raised through
15 cross-examination we're going to put on an officer that responded to cross hairs so we can have a
16 time reference to when he came into the gun shop demanding a gun cause Mr. Pike couldn't
17 recall yesterday, um, and we were going to have an officer that collected the clothing of the
18 victim at the hospital which will take probably less than 5 minutes. Um, we possibly will call
19 our case agent and a, uh, cellular records custodian from Platau but we're covering a lot of basis.

20 DT: I, uh, as a Court I'm certainly not gonna try to tell any lawyers how to try their cases, uh, but
21 there should still be some things in there that maybe you could do without but that's up to you.
22 We will not, uh, stop the trial at this juncture.

• Staté of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 JC: Well I appreciate the Court's ruling but I've made the motion and I'm concerned that I cannot
2 competently and effectively represent my client if he's unable because of the situation just as, he
3 is lay low, he's crying, uh, he interrupts, he wants to, he's already made statements to people that
4 are contrary to his interests. I don't' know what he's gonna do or whether he's doing it
5 intentionally. I know the Court is of the impression that perhaps he's feigning but I'm not gonna
6 make that decision.

7 DT: No.

8 JC: Not and that reflects for myself.

9 DT: No. And I'm not ...

10 JC: I ask for evaluation.

11 DT: I' not asking you to-to make any determination other than the one that you're making to be safe
12 and I believe you are acting in good faith counsel, I always have. Uh, history would show that
13 we're retrying this case, uh, he was at the time that we took his guilty plea, he was crying and
14 carrying on just as he appears to be now and, uh, uh, so we are trying this case again. If the
15 Court, uh, uh, the big Court, A Court wants this case tried again, that would be fine but I'm not
16 quitting it today. That's my ruling we'll be going forward.

17 AR: Can I say something Your Honor please.

18 JC: I can't stop him Judge.

19 DT: I understand but what do you want to say briefly, I'll give you 2 minutes.

20

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 Maxine Schwartz to evaluate the defendant. She determined the defendant was incompetent to
2 stand trial and submitted a report that was provided to the court and the prosecution. An order
3 finding the defendant currently incompetent to stand trial and committing defendant to the Las
4 Vegas Behavioral Health Unit for treatment to obtain competency was filed April 17th, 2008.
5 The defendant was admitted to that facility on June the 5th, 2008. On August the 18th, 2008 the
6 Las Vegas Behavioral Unit, Behavioral Health Unit prepared a final report finding the defendant-
7 defendant competent to stand trial. A competency hearing was set based upon reports submitted
8 by Dr. Burness. Dr. Burness testified at the competency-competency hearing that it was her
9 opinion that the defendant was faking his symptoms and was competent to stand trial. The court
10 found the defendant competent to stand trial automatically set for trial. This court is of the
11 opinion at this juncture that the opinion of Dr. Burnis that the defendant is faking continues and I
12 believe he is competent to stand trial based upon that testimony. Obviously several years have
13 passed in the interim but, uh, I-I'm prepared to continue this trial, uh, and that's what we're
14 gonna do.
15

Exhibit M

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/10/13 CD B 3:45:47 – 3:46:20

2 DT: Uh, I've not seen a situation where the defendant like this, the way this trial's unfolded would-
3 would make, uh, the submission, uh, of jury instruction or, uh, a jury finding of mentally ill.

4

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

- 1 JC: Well I appreciate the Court's ruling but I've made the motion and I'm concerned that I cannot
2 competently and effectively represent my client if he's unable because of the situation just as, he
3 is lay low, he's crying, uh, he interrupts, he wants to, he's already made statements to people that
4 are contrary to his interests. I don't know what he's gonna do or whether he's doing it
5 intentionally. I know the Court is of the impression that perhaps he's feigning but I'm not gonna
6 make that decision.
- 7 DT: No.
- 8 JC: Not and that reflects for myself.
- 9 DT: No. And I'm not ...
- 10 JC: I ask for evaluation.
- 11 DT: I'm not asking you to make any determination other than the one that you're making to be safe
12 and I believe you are acting in good faith counsel, I always have. Uh, history would show that
13 we're retrying this case, uh, he was at the time that we took his guilty plea, he was crying and
14 carrying on just as he appears to be now and, uh, uh, so we are trying this case again. If the
15 Court, uh, uh, the big Court, A Court wants this case tried again, that would be fine but I'm not
16 quitting it today. That's my ruling we'll be going forward.
- 17 AR: Can I say something Your Honor please.
- 18 JC: I can't stop him Judge.
- 19 DT: I understand but what do you want to say briefly, I'll give you 2 minutes.
- 20

Exhibit W

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 10/10/13 3:46:30

2 JC: We have witnesses that testified about his behavior and mental health issues, he's talking to
3 himself in the mirror all of that's sufficient to make a GBMI submission. I'm not gonna submit a
4 competency instruction, that was a proposed instruction, that we don't have, I requested a
5 competency assessment in the middle of this trial and that was denied so-so with that and-and
6 we're not objecting. We understand that once that evidence is raised that it's competent
7 evidence now that's arguable that it was competent evidence that he's mentally ill at the time
8 right now. None of them have been with him so the only mental illness that probably could have
9 been testified to I mean his witnesses all talked about the last time they dealt with him was back
10 in 2007 ...

11 DT: We took note.

12 MC: Now the defendant took the stand and he raised no issue about being mentally ill other than not
13 fully understanding and what not so if they get that instruction, guilty but mentally ill obviously
14 we give the rebuttal, uh, Mr. Morrison stepped out, he's not raising the competency at the jury,
15 he's guilty but mentally ill and so if the court's going to allow that instruction, um, you know,
16 that's what our rebuttal witnesses are for. The GBMI is available, was available in '07 when the
17 crime committed. It's been under appeal since this but that doesn't deprive him of the right, uh,
18 to have that submitted.

19

20

21

22

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/10/13 CD B 9:20:00 -- 9:26:00

2 AR: Okay Your Honor, with all due respect I want to stand up. Uh, they offered me a plea today, um,
3 it was guilty but mentally ill which I was very confused of the charges I have in the first, uh, they
4 said it's tampering, I have no clue what those are for, what they're about, I have no clue about
5 the first three, I just know the name, the word, the names and the guilty but mentally I have-have
6 no idea what it's about or nothing, he tried to explain but like I said when they communicate it's
7 hard for me to understand and it takes a long time got to write it and I'll read it over, but also
8 that, um, uh, okay they okay that and then also they said they're calling doctors to testify against
9 my-my mental state, Dr. Ness and another doctor but I was never notified they were calling
10 doctors and I was unable to call Dr. Maxine Schwartz in my-my defense and also I was unable to
11 get a private investigator to call some of the witness that I had names to but I was unable to
12 locate cause I was locked up in prison and their-their job is to locate the witnesses for you and I
13 was unable to call plenty of witnesses which affected my defense and I'm sorry to disrespect
14 anybody in the Courtroom, I apologize in advance, and also, um, my meds say I'm a
15 schizophrenic, paranoid schizophrenic, paranoid delusions, hallucinations, I never got sent for 90
16 day evaluation see how I'm acting every day for those 90 days, I got sent there for one hour and
17 maybe two hours evaluated by Dr. Fink and that's it, that's an improper evaluation in my opinion
18 and I-I feel like I've been treated unfairly and also, um, there was plenty of media, um, this
19 whole week which the Jury will probably didn't hear but there's plenty of media about me in the
20 newspapers, the TV, the radios and everybody's asking me all kinds of questions and I'm, I just
21 say I don't know what's going on cause I have no, uh, way to see newspapers or radios or
22 anything but also I don't know, uh, I know Mr. Cosby is my attorney and he's supposed to be for

EXhibit X

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 my defense but like I said in the past, I've asked to fire him, I've asked to get a new attorney
2 which I can't, I can't afford it I'm poor, I have no help from my family just basically to get my
3 hygiene and that's it and-and also I, um, I asked for a new attorney, I asked for a private
4 investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I
5 asked for several motions which I don't know if they were, they were even filed or if they were
6 denied, I've asked, uh, I don't know if Mr. Cosby I just feel like maybe I-I have a big mouth and
7 I sit to-to open my big mouth and say things and I don't know if I made him angry or upset or
8 frustrated or what I've done but for some reason I don't know if he's gonna lose this case
9 because it's a weak case or if it's intentionally or accidental or I'm just paranoid or ...

10 DT: Mr. Ramirez.

11 AR: ... but-but something Your Honor for that ...

12 DT: The issues that you wanted to be on the record you've listed them and I think you've listed them
13 well, uh, thank you for all the truth of the situations that-that you face, uh, and-and-and it's tough
14 to understand everything even if you're in the system, but I think that you've made a record ...

15 AR: Sorry Your Honor.

16 DT: ... and the Appellate Court will see that record and-and therefore that's-that's what you needed to
17 do and that's what you've done.

18 AR: Okay. Thank you Your Honor I had more, uh, uh, things to say but thank you for that time I'll-
19 I'll just say them on my appeals, I had more things that I wanted to say but thank you.

20 DT: Okay thank you sir. Alright (9:25:58)

State of New Mexico vs. Albert Ramirez
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1 10/10/13 CD B 10:45:45 -10:58:56

2 AR: Uh, I don't want to throw Mr. Cosby under the bus or anything but the reason I didn't say
3 anything in my opening statements which you just put on the record in my defense was I advised
4 Mr. Cosby yesterday when he visited me, I didn't want to speak about this and I was waiting for
5 him to ask me. I thought he had to ask me a question if I'd been sexually abused or sexually
6 assaulted, I didn't know I had to just say it out of my own ...

7 (Inaudible everyone talking together)

8 DT: So you-you don't, Mr. Cosby is acting as your attorney and he's doing an excellent job and he's
9 absolutely correct you just don't want in here and say at-at the beginning of the defense case that
10 it's been going on for years and years and years.

11 AR: Oh but-but ...

12 DT: And that's what this looks like to me. It looks like to me ...

13 AR: Well I thought you're supposed to ask questions and I'm supposed to give answers.

14 DT: You-you need, you need to listen to me cause it's my turn to talk, it's my court.

15 AR: Oh sorry sir.

16 DT: I've let you talk, I've-I've heard from and-and you've had plenty of leeway.

17 AR: I-I have more to say about my ...

18 DT: I know you've got a whole lot more to say ...

19 AR: Cause it's my life.

20 DT: ... and you have the rest of your life to say it.

21 AR: I want to see it on record.

22 DT: But we have, we have heard a significant amount of what you have to say and what you want to

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- 1 say and you're saying some more stuff right now that is on the record. The part that I'm gonna
2 restrict is that you're not gonna go into this area at this juncture in this trial.
- 3 AR: It's-it's, uh, relevant to the case and also I didn't get asked about how, about my schooling, like I
4 thought it was maybe it was important to the Jury about how I was doing in school and before
5 how this led up to it and I didn't get asked about why I broke the window to my mom's
6 boyfriend's car, what happened that day, who was there, I didn't get asked, um, several things ...
- 7 DT: See those are not relevant to the issue that we are here about.
- 8 AR: How come they've used it in court? He brought it up. The prosecution said I broke a window
9 but it's not relevant? It's relevant if the prosecution used it but I can't explain why it's relevant
10 Your Honor and you all a very educated man and I'm a nobody and I'm real low, uh, low IQ but
11 I guess in my life and I feel like I'm not having a fair trial because if-if I would have known that
12 I didn't have to get asked a question about me being sexually assaulted by my neighbor and
13 (inaudible) I would have just said it myself but I just had respect for the courts and for you for
14 Matthew telling everybody I wasn't gonna just throw it out there like that.
- 15 DT: You're-you're ...
- 16 AR: But I don't feel it's fair.
- 17 DT: You have, you've explained this issue and you've been through psychological evaluations and
18 we've had two for sure ...
- 19 AR: Okay.
- 20 DT: ... did you explain that to them?
- 21 AR: Yes. Yes sir. Another thing, thank you for letting me speak, I greatly appreciate it and God
22 bless you all. I've let Maxine Schwartz know that I was sexually assaulted. It's on record, she

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1 knows. I've told her what happened by my neighbor, by my mom's boyfriend, I told Maxine
2 Schwartz that's why I was hurt that I didn't get to have that as my defense today and also ...

3 DT: And who is Maxine Schwartz.

4 JC: She's the one, uh, the original determination wasn't competent.

5 AR: And also ...

6 JC: Psychologist.

7 AR: ... Dr. Burness I'm not gonna say whether she asked me or not but like I said I was assaulted over
8 there and battered and they sent me back and found me competent which isn't, wasn't good, was
9 not prop-professional and also Dr. Fink I tried to explain this to Dr. Fink that I was sexually
10 assaulted and-and Dr. Fink stated well that doesn't have anything to do with your case. He said
11 your murdered somebody and that doesn't have nothing to do with your case and he said also he
12 said even if you were incompetent my job as working for the State of New Mexico is to find you
13 competent and whether you get to the hospital or not they're still gonna find you competent
14 because that's the job the State of New Mexico has and I said well I explained everything and I
15 was, I' not get, I'm not, it's not fair and I think it's relevant.

16 JC: Okay there is ...

17 AR: If your child was ever assaulted would you want ...

18 JC: Can-can we finish please? Go ahead but there is record that you discussed with psychologists
19 something about being sexually assaulted in the report and I hesitate to have to do this but in the
20 report the psychologist says that he's malingering and fabricating and that the allegations of
21 sexual abuse is I believe that her term, highly suspect. So it was brought up, it was discussed, it
22 was not, um, commented much upon except when the report that the person said because of his

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Excerpts from Transcript

1 alleged malingerer, she felt the report was highly suspect. I can't call a psychologist in just to
2 ...

3 DT: Say that?

4 JC: ... have them say in front of the jury that, uh, my client's claim of this is highly suspect because
5 obviously that's gonna weaken his case.

6 AR: Oh what ...

7 JC: Excuse me sir.

8 AR: I'm sorry sir.

9 JC: Please.

10 AR: Right I just ...

11 JC: Please, just relax please.

12 AR: It's my life sir.

13 JC: So there are evidence concerning his, uh, discussing this. There is no evidence before the
14 homicide and that we don't have. We don't have police reports, we don't have, uh, reports that
15 his juvenile foster home, we don't have anything of that nature. As a matter as-as discussed
16 with my client we have one report from a juvenile home where he asked whether there was any
17 abuse or neglect in the home and he told that person at the time no. Just that he was spanked.
18 Um, that could have been used perhaps against him and we'd put that person on. So he has a
19 right I think to say this and I'd like to make a proper ...

20 DT: Alright.

21 JC: ... of what he would say happened just for the record.

22 AR: I would like to say.

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1 JC: Well you're-you're getting your chance sir now.

2 AR: I would like to speak.

3 JC: You are. You're, just a second ...

4 DT: Well I'll give you 5 minutes to tell the story.

5 AR: I don't want him. I don't, huh?

6 DT: I'm gonna give you 5 minutes to tell this story.

7 AR: Tell what story?

8 JC: About your sexual problems ...

9 DT: That your sexual ...

10 AR: Okay. I got 5 minutes.

11 JC: Sit back, sit back.

12 AR: I'm not acting up. Okay ...

13 DT: Sit, sit for it.

14 AR: I'm not, there ain't nobody, I'm peaceful like everybody else.

15 DT: They're just doing their job and you're, and you're gonna make a statement, I'm gonna give you

16 5 minutes and you need to understand that this is the statement ...

17 AR: Yes sir.

18 DT: ... that will go on the record.

19 AR: Yes sir.

20 DT: Because the court is of the opinion that it's an inappropriate thing to bring before the jury and

21 I'm not gonna let you do it.

22 AR: Okay.

State of New Mexico vs. Albert Ramirez
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1 DT: It is highly suspect for sure in my opinion.

2 AR: I, uh ...

3 DT: And (inaudible) against you're done so say what you want to say.

4 AR: Okay. Mr. Cosby stated that supposedly a psychologist/psychiatrist stated that I was malingering
5 or they didn't believe me which in my opinion when he said that, which it went against me and
6 on the record, okay if there's a psychiatrist/psychologist, Maxine Schwartz which I told and she
7 believed me, um, that would be relevant and that would help my case which would make it
8 allegedly true and what he said about somebody saying that I was malingering makes me look
9 bad but why would he say that Dr. Maxine Schwartz believed me when I told her about the
10 sexual abuse and it makes me right. And also about foster care okay I never told nobody, I was
11 embarrassed. The only person I told was my mother and about this I was about, when
12 (inaudible) done this to me he would give me beers so I started drinking with him and then later
13 on I drunk a lot of beers with him, and, um, I was 16 it was the summer time and, uh, he, uh,
14 tried to kiss me and I told him no and, uh, he got in my face and he threatened to-to punch me, he
15 threatened to hit me and I-I didn't want to get hit, I was scared. So I said okay. Then, uh, he
16 forced me to give him oral sex which I did, which only lasted maybe 2 to 3 minutes at the most
17 and then it was done, it was right in the living room, I was sitting on the couch, he was standing
18 in right in front of me and I did it and he told me not to say nothing but I told my mom and my
19 mom asked him, he denied it. Well then later on about a month later he-he did it again and I
20 told my mom and she said, uh, she was gonna call the cops and-and, um, they got in an argument
21 and I guess he unplugged the phone and they were talking and then my mom sent me to my room

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 and then nothing ever happened. My mom just said I talked to him, I talked to him and-and that
2 was it.

3 DT: (inaudible)

4 AR: And-and-and she told me that she said that she told him that if I ever said anything about him
5 hitting me or any sexual abuse that she was gonna press charges and that I was gonna give, I was
6 gonna have to tell the police and stuff, well not about that, well about Sam Size. I used to go
7 over there because he used to call me over there and when I was between junior high I used to go
8 over there and I always used to like to drink and smoke weed so in order to get beer, I would go
9 to him and I just went over there and I would drink and, um, I would get a beer or two and he'd
10 give me a beer or two and he tried to, he tried to get with me. He just asked for a hug and then
11 he grabbed my, I can't remember if he grabbed my penis and my butt or both and he tried to put
12 his lips on mine, I told him no back up, you know, and I-I ran away with the, with the beer and
13 then I-I ended up going back one more time and, um, I needed some more beers cause I was with
14 my friends and it was Sunday, I don't remember the date, it was summer time, I was 16, he gave
15 me, I went and I said hey man I-I need some beers and, um, I don't remember exactly what was
16 said but I know he gave me like 7 to 8 beers and he tried the same thing on me and he touched up
17 on me and that's assault, he grabbed my penis and my butt and everything and he always tried to
18 invite me over there but I was scared of him. The reason I was scared of Sam Size to go over
19 there was because he told me when I was a little kid, do not, he told me he said, um, cause I used
20 to hang out at the other neighbor's house and he used to just give me beer free, he wouldn't try
21 nothing on me or anything, he just gave me beer for free, just to hang out, smoke and, uh, Sam
22 told me I don't like him, you shouldn't be hanging out with him because he's always talking crap

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 about me, he says that I-I, uh, he-he's saying that I, uh, I can't, I don't want to say something
2 wrong but he said, and I ain't making this up because I seen it in discovery, this is exact what
3 happened. He told me from his mouth that Michael Morales was talking about him and said that
4 he raped or, uh, raped or had some kind of sex with two young males between 12 and 18 and
5 once he told me this I was really afraid of him because I thought he was gonna try to have sex
6 with me and I was real paranoid because he-he's a big man. So I'd be, I'd watch out for myself
7 but I know it's hearsay but Mike would tell me the same thing and that's why I believed it to be
8 true and whether I can testify to it or not, I mean that's the truth so let it be on the record and ...

9 DT: Right.

10 AR: ... I just feel like, uh, I know whether you all are upset because I withdrew my plea but we
11 wouldn't be here in the first place if I wouldn't have got those extra two and a half years, it's a
12 big headache for me as well.

13 DT: Alright.

14 AR: And, uh, sorry your Honor one more thing is that I feel like it would be fair because this is my
15 life and this is what happened and I, it is relevant. I've told plenty of people in mental health
16 since I've been locked up in prison about being sexually assaulted and they got it written down
17 and they said well we need to get you mental health and I've told them.

18 DT: Right.

19 AR: And-and Dr. Burness ...

20 DT: I've got your story.

21 AR: She just ...

22 DT: I've got your story.

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 AR: I was beat up over there.

2 DT: The court, the court continues to be of the opinion that two things well after hearing the story
3 that it-it's still suspect and I'm not sure it'd be relevant.

4

5 10/10/13 3:24:59 -3:25:49

6 UF: Well as of us, yeah because he had already been having all these issues where he was always
7 thinking somebody was after him. He would talk to himself, he would hear voices, he would.

8

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/10/13 4:41:38 – 4:42:15

2 AR: Your Honor I just want 10 second, just want to state something real fast.

3 DT: Say it.

4 AR: In my opinion I want to file a motion for review the witness so I can use it in my Court of
5 Appeals and I wanted my, that doctor to come testify in my behalf so I can use it in my Court of
6 Appeals and she's not able to do that and I feel like it's gonna not, I'm not gonna be able to get a
7 fair trial because I want her to be able to come, be-be a witness because, uh, she knows about
8 my, um, sexual abuse which I told her and that I want it down on the record and Your Honor I'd
9 like to speak about that and I didn't get to speak about my mental illness, mental health issues on
10 stand but so thank you Your Honor.

11 DT: Thank you sir. Thank you very much.

12

13

14

15

16

17

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/10/13 4:32:27 – 4:36:41

2 MC: Your Honor with the, um, rule except upon good faith that the defendant is not going to submit a,
3 uh, lack ability to form specific intention instruction, we're also accepting in faith that he's not
4 going to submit a competency instruction, based upon that or insanity instructions, however there
5 will be instruction for guilty of 1st Degree Murder, guilty with mentally, or guilty, um, but
6 mentally ill and then if the Court allows the step-downs or, you know, for 2nd and-and for the
7 provocation and for voluntary. So based upon that the State, uh, does not believe we're going to
8 call in rebuttal witnesses with regards to competency or insane.

9 DT: Great resolution, makes good sense.

10

Exhibit Y

¹ State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 10/10/13 3:46:30 – 3:52:06

2 MC: Your Honor with-with the, um, rule except upon good faith that the defendant is not going to
3 submit a, uh, lack ability to form specific intent instruction, we're also accept in good faith that
4 he's not going to submit a competency instruction based upon that or insanity instructions,
5 however, there will be instruction for guilty of 1st degree murder, guilty of a mentally, or guilty,
6 um, but mentally ill and then if the Court allows the step down or, you know, for 2nd and-and for
7 the provocation of involuntary. So based upon that the State, uh, does not believe we're going to
8 call in rebuttal witnesses with regard to competency or insane.

9 10/10/13 3:51:56 – 3:52:00 (INCLUDED IN ABOVE)

10

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

STATE OF NEW MEXICO
COUNTY OF CURRY

Case No. D-905-CR 2007-00434

STATE OF NEW MEXICO,
Plaintiff,

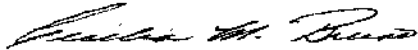
v.

ALBERT RAMIREZ,
Defendant.

CERTIFICATE OF TRANSCRIPTION

I, the undersigned legal transcriptionist, DO HEREBY CERTIFY, that the foregoing transcript is a true and correct record of the excerpts from the transcript re: competency as transcribed by me. The above-noted statement was transcribed to the best of my ability from a cassette and/or digital recording supplied by defense counsel.

I, FURTHER CERTIFY, that I am not related to any of the parties or attorneys in this case and I have no interest whatsoever in the final disposition of this case in any court.



Cecilia M. Bruno

Exhibit Z

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY, NM
FILED IN MY OFFICE

2018 JUN 15 PM 3:03


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**NOTICE THAT THE COURT IS NOT DISMISSING ANY PORTION OF THE
AMENDED PETITION AT THIS TIME AND ORDER FOR STATE TO RESPOND TO
AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017, the Court having appointed the Law Office of the Public Defender to represent the Petitioner, Petitioner's Amended Petition for Writ of Habeas Corpus having been filed, through Counsel, on May 18, 2018 and the Court limiting its analysis to said Amended Petition, the Court having reviewed this matter, and being otherwise well and sufficiently advised in the premises;

THE COURT HEREBY FINDS:

1. Petitioner is represented by Liane E. Kerr, Attorney at Law.
2. Through Counsel, Petitioner filed an Amended Petition for Writ of Habeas Corpus on May 18, 2018.
3. "Within thirty (30) days after the filing of an amended petition or a notice of non-intent to amend the petition, the court may dismiss some or all of the claims in the petition." Rule 5-802(H)(3) NMRA. This Court has reviewed the Amended Petition and puts all parties on notice that this Court is not dismissing any of the claims in the Amended Petition at this time.

EXHIBIT

X

4. This Court notes that the New Mexico Supreme Court found that, at least to a portion of the issues raised by Petitioner, that Petitioner retained the ability to bring such a claim via a habeas corpus proceeding. *State v. Ramirez*, 2016 WL 7029226, ¶ 32.

5. “Within one-hundred and twenty (120) days after filing of the amended petition . . . the respondent shall file a response to any claims not dismissed and provide a copy of the response directly to the assigned judge.” Rule 5-802(H)(3) NMRA. Therefore, the Ninth Judicial District Attorney’s Office shall file a response to Petitioner’s Amended Petition for Writ of Habeas Corpus within one-hundred and twenty (120) days from the date the Amended Petition for Writ of Habeas Corpus was filed (May 18, 2018).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Drew D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

STATE OF NEW MEXICO

IN THE NINTH JUDICIAL DISTRICT COURT

COUNTY OF CURRY

STATE OF NEW MEXICO,

RECEIVED
NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
2019 SEP 10 PM 2:06

Edith J. Dwyer
NINTH JUDICIAL DISTRICT COURT

Plaintiff,

vs.

ALBERT RAMIREZ,

No. D-0905-CR-200700434

Defendant.

STATE'S RESPONSE

TO DEFENDANT'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the State of New Mexico by and through her District Attorney for the 9th Judicial District, Andrea Reeb, and respectfully requests this honorable court to deny the defendant's petition for a writ of Habeas Corpus and in support of this request would offer the following:

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State v. DeGraff, 2006 NMSC 011

NEW MEXICO STATUTES:

NMSA 1978 § 30-2-1(A)

NMSA 31-9-1.5

NEW MEXICO SUPREME COURT RULES:

Rule 11-404(B) NMRA

Rule 11-403 NMRA

FEDERAL CASES:

Deck v. Missouri, 544 U.S. 622

ARGUMENT

I. PETITIONER'S TRIAL ATTORNEY MADE STRATEGIC AND TACTICAL DECISIONS DURING TRIAL, THEREFORE THERE IS NEITHER A VIOLATION OF INEFFECTIVE ASSISTANCE OF COUNSEL OR OF THE COMPULSORY PROCESS

A. Introduction and standard of review.

Petitioner claims that the Sixth Amendment Right to Effective Assistance of Counsel and Right to Compulsory Process, furnish Petitioner with the ability to raise ineffective counsel because Petitioner's trial counsel refused to call an expert witness to testify regarding the Petitioner's mental status. The Appellate Court reviews constitutional issues de novo. State v. Belanger, 2009-NMSC-025, ¶ 8, 146 N.M. 357, 210 P.3d 783.

"The Sixth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, guarantees not only the right to counsel but "the right to the effective assistance of counsel." Patterson v. LeMaster, 2001-NMSC-013, ¶ 16, 130 N.M. 179, 183, 21 P.3d 1032, 1036. The purpose of guaranteeing effective assistance of counsel is to ensure fairness throughout the course of a criminal case. Id. A prima facie case of ineffective assistance is made by showing that defense counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced. Id. There are two prongs to assess the counsel's reasonableness. A prima facie case of ineffective assistance of counsel requires that a defendant or petitioner in a habeas corpus proceeding is required to establish (1) petitioner's counsel's performance fell below a reasonably competent attorney, and (2) prejudice resulted from the Counsel's incompetence. *See State v. Cordova*, 2014-NMCA-081, ¶ 9, 331 P.3d 980, 983; State v. Manuelito, 1993-NMCA-045, ¶ 6, 115 N.M. 394, 395, 851 P.2d 516, 517; Duncan v. Kerby, 1993-NMSC-011, ¶ 10, 115 N.M. 344, 348, 851 P.2d 466, 470. To determine whether there was resulting prejudice, the Court must consider the totality of evidence

presented. State v. Price, 1986 NMCA 036, 104 N.M. 703, 709, 726 P.2d 857, 863 (Ct.App.1986).

There are two additional factors taken into account when performing the evaluation: strategic decisions made by defendant's counsel and unreliability of trial resulting from counsel's prejudice. The Court does not second guess the counsel's strategic decisions. Patterson quoting Churchman v. Dorsey, 1996-NMSC-033, ¶ 18, 122 N.M. 11, 919 P.2d 1076. Second, the prejudice prong is different for defendants who are convicted at trial than defendants whose convictions rest on pleas. A defendant at trial must prove that trial counsel's unreasonable performance calls into doubt "the reliability of the trial results." Patterson quoting Jacobs, at 127.

i. Meaningful Adversarial Testing.

In this case, Petitioner acknowledges he is required to prove both ineffectiveness of assistance of counsel by showing petitioner's counsel's performance fell below a reasonable competent attorney and showing how the counsel's ineffective performance resulted in prejudice against the petitioner. Since Petitioner was convicted at trial, he must also show how such prejudice resulted in a doubt that the trial results were reliable. However, Petitioner also claims that this is a case of egregious failure by trial counsel and, as a result, the Petitioner is relieved of the burden of proving prejudice. Petitioner argues egregiousness by claiming Petitioner's counsel failed to subject the prosecution's case to meaningful adversarial testing, by way relieving Petitioner to prove resulting prejudice.

The State disagrees. In State v. Dietrich, 2009-NMCA-031, ¶ 82, 145 N.M. 733, 753, 204 P.3d 748, 768, the court analyzed whether the defendant's counsel failed to subject the prosecution's case to meaningful adversarial testing when counsel did not move for a mistrial when it discovered the alleged victim would not be testifying. The court found that because the counsel attempted to impeach the alleged victim's statements brought out as hearsay through one of the State's witnesses, the counsel acted reasonably. The court stated, "counsel's attempt to impeach the alleged victim through a

witness and discover the tenor of the witness's investigation is exactly what defense counsel attempted to do, making that counsel an active participant in the defendant's trial." In addition, the counsel filed pretrial motions, filed a motion to suppress, and participated in hearings arising from his motions.

This case is similar to Dietrich. Petitioner alleges that his counsel was ineffective because he refused to call an expert witness to rebut Petitioner's competency. In 2008, Petitioner raised competency issues and on March 10, 2008, Petitioner was evaluated by Dr. Maxine Shwartz who rendered an opinion that Petitioner was incompetent. The court, ordered the Petitioner to be transported to the New Mexico Behavioral and Health Institute (NMBHI) in Las Vegas, NM, for treatment to attain competency pursuant to § 31-9-1.2 NMSA. On June 5, 2008, Petitioner was admitted to NMBHI, and on August 18, 2008, Dr. Joanne Burness who had evaluated Petitioner, rendered an opinion that Petitioner was competent to stand trial. During a Competency Hearing, Petitioner was deemed competent by the court. Dr. Burness testified during this Hearing. Dr. Shwartz did not.

Petitioner argues that because his counsel did not call Dr. Shwartz as a witness during the hearing and later at trial, that counsel should be deemed ineffective. Petitioner refers to Petitioner's Exhibit J as the "transcript from trial" dating October 9, 2013 where "Dr. Burness from NMBHI testified that she believed the Petitioner was malingering." It is important to clarify that while the Petitioner indicates that Dr. Burness testified to these statements at trial in October 2013, the record would reflect that Dr. Burness did not testify on October 9, 2013 at 2:41:40. In fact, Dr. Burness did not testify at all to the Petitioner's competency during the 2013 trial. The statements made in Petitioner's Exhibit J were made by the trial judge, the Honorable Teddy L. Hartley. This is only one of several errors in the transcript including referring to the trial judge as the Honorable Drew D. Tatum when the trial was presided over by the Honorable Teddy L. Hartley.

While Dr. Burness did not testify at the trial, the Doctor did testify during the Competency Hearing, on August 27, 2008, and stated that Petitioner was

malingering. The comments in Petitioner's Exhibit J are the trial courts comments regarding his recollection of that hearing.

Petitioner argues its counsel was ineffective because he failed to present Dr. Schwartz's testimony at trial presumable to argue that Petitioner was not malingering. However, at the time of trial, both parties had already stipulated that Petitioner was competent. (Stipulated on January 13, 2013 before the trial in October 2013) (Exhibit 1). The State argues that there would have been no reason, other than to confuse the jurors and delay proceedings, to bring Dr. Schwartz into testify to sometbing, which was already stipulated. Petitioner had already been to Las Vegas, NM and had been treated to competency for trial. There had already been Competency Hearings to establish his competence before the trial took place and counsel for the Petitioner took part in those hearings. Most importantly, the testimony of Dr. Schwartz would be irrelevant at the time of trial. The trial took place October 7 through October 11, 2013. Dr. Schwartz met with the defendant on March 10, 2008. It had been five (5) years six (6) months and twenty seven (27) days between the time that Dr. Schwartz saw the defendant for her report and the trial. Her observations and opinions would have been stale and irrelevant at the time of trial.

In addition, it was clear from the record that in the event that the Petitioner choose to call Dr. Schwartz in the trial, the State would have called Dr. Burness as a rebuttal witness and it was very likely that her opinion that the defendant was malingering would have been admitted into evidence as well. (Exhibit 2) It was only after the State indicated that it intended to call rebuttal witnesses that the defense made the strategic decision not to call Dr. Schwartz. This was trial strategy that prevented the State from being able to call their expert in the trial. Like in Dietrich, the court should find that Petitioner's attorney reasonably acted to further court proceedings. There is no indication or any evidence that trial counsel failed to provide meaningful adversarial testing of the issues.

ii. Relevance and Strategic Decisions

Petitioner argues that since its counsel failed to provide Dr. Schwartz' testimony during the second competency hearing, such counsel's performance should be deemed ineffective. It is the State's contention that the testimony from Dr. Schwartz was irrelevant and the action of trial counsel to not call her for testimony was a strategic decision. After Petitioner's care at the NMBHI, where he was evaluated for more than 60 days by Dr. Burness who monitored his patterns and psychological state of mind, there would be little if any relevance to the evaluation of Dr. Schwartz that was performed before treatment. Dr. Schwartz's testimony would have been regarding five months prior to the most updated and current evaluation at that time. Upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding. The most up to date evaluation, then, would be most relevant and helpful for the court to render a decision that the Petitioner was competent and continue with court proceedings.

iii. Strategic Decisions by Counsel

Petitioner's trial council's decision not to present Schwartz as a witness to testify at the competency hearing was a strategic decision. A trial counsel may make decisions to move forward an argument, and not prolong proceeding with irrelevant, unhelpful information. Rule 11-401 NMSA tests relevance as having a tendency to make a fact more or less probable than it would be without evidence, and the fact is of consequence in determining the action. Calling a witness who has no relevant information would not assist the Court to make a decision. As stated in Patterson, the Court does not second guess the counsel's strategic decisions.

II. PETITIONER'S PRIOR ACTS INTRODUCED DURING TRIAL WERE RELEVANT AND RELATED TO THE STATE'S BURDEN OF PROVING MOTIVE AND/OR INTENT TO MURDER THE VICTIM

Petitioner was charged and convicted of murder in the first degree, pursuant to §30-2-1(A) NMSA. It is the State's burden to prove every element of the crime charged beyond a reasonable doubt. In this case Murder in the first degree required a showing that someone was killed by the defendant, without lawful justification or excuse by any kind of willful, deliberate and premeditated killing. To determine whether the evidence admitted during trial is related to the issues of the case, the State must relate the evidence to the motives and/or intent of the defendant. "Proof of motive sheds light on the likelihood of a defendant's guilty, and intent is an essential element of murder. Evidence that makes motive or intent more or less probable is therefore relevant." State v. Flores, 2010 NMSC 002, 226 P.3d 641. In Flores, the Court stated that although when viewing the evidence in that case in an isolated manner, it might not have concluded motive, when viewing all of the evidence in the totality of the case, the evidence could help the jury determine if the defendant was motivated to hurt or kill the victim. In this case, it is also necessary to view the evidence in light of all of the evidence in the case.

Intent is subjective and is almost always inferred from other facts in the case. Under Rule 11-404(B), evidence of a defendant's prior acts is admissible to show motive. Under Rule 11-403, evidence may be excluded only if its probative value is substantially outweighed by its prejudicial impact, the potential for confusion of issues, or the danger of misleading the jury. Determining whether the prejudicial impact of evidence outweighs its probative value is left to the sound discretion of the trial court. In State v. Rojo, 1999 NMSC 001, the Court ruled that when the evidence presented was found by the trial court to have probative value to assess a theory of motive for the murder committed, the trial court did not abuse their discretion in admitting the evidence.

In this instance, Petitioner argues that the prior acts of violence and rage he displayed toward the victim and Petitioner's mother leading up to the murder were not relevant. The State disagrees. First, it is important to note that the victim in this case, Eladio Pobledo, was residing with the Petitioner's mother. On multiple instances, Petitioner was violent toward the victim and threatened him, which

Petitioner admitted during the testimony at trial. The first act Petitioner argues was not relevant is the broken front window at the victim's home. Petitioner argues that the State could not prove that he broke the window. On October 10, 2013, 1:08:40 PM, Petitioner testified and admitted that he had broken out the window and did not know if his mother called the police on him for doing it. The second act Petitioner argues against being admitted was Petitioner breaking his mother's windshield with crutches. On October 10, 2013PM1:10:12 PM, Petitioner testified and admitted that he had broken out the window and did not know if his mother called the police on him for doing it. One act of violence toward the victim and Petitioner's mother may not point to direct motive, but several instances of violence is relevant to show motive and intent which is a question for the jury.

Lastly, the Petitioner argues that evidence brought in regarding Petitioner visiting a gun shop inquiring about buying a gun was not admissible to prove motive. The State disagrees. Facts that Petitioner searched for a gun at a gun shop was relevant and could have also been used to prove motive and/or intent to inflict serious injury or kill the victim. Less than 24 hours after Petitioner purchased bullets, Petitioner shot and killed the victim execution style in front of the victim's home. It is the determination of the fact finder to evaluate the facts surrounding the case, and determine if such facts conclude the Petitioner murdered the victim intentionally. Facts against the Petitioner may indeed be prejudicial, but until that prejudice substantially outweighs the probative value, they shall be admissible. Since each of these actions on the part of the defendant has probative value the trial court was correct to admit them.

**III. THE SHACKLED PETITIONER WAS NOT PREJUDICED WHEN HE FELL
BECAUSE ALL PARTIES AGREED THAT THE JURY DID NOT SEE THE**

RESTRAINTS AND THE COURT REMEDIED IT FROM BEING AN FUTURE ISSUE BY UNSHACKLING PETITIONER'S ANKLES AFTER THE FALL

The Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest to a particular trial, including security concerns. State v. Johnson, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 59, 229 P.3d 523, 532. Where a defendant is restrained in a manner not visible to the jury, prejudice is not presumed. Id. Generally, a prisoner coming into court for trial is entitled to make his appearance free of shackles or bonds. However, the defendant's right to appear free of visible restraints is not absolute. It must be balanced against the state's interest in maintaining security. Id. The jurors' inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial. In this case, if the jurors saw anything it would have been brief and inadvertent.

However, the evidence shows that in fact the jury never saw the shackles. A review of the record indicates that the Petitioner did fall around 3:06:11 P.M. on the first day of the trial, October 7, 2013. However, when Petitioner fell, all parties asserted that none of the jurors saw the Petitioner's legs shackled. Petitioner argues that the Court did not attempt to remedy the possibility that a juror may have seen Petitioner's shackles. However, the Court and the defense attorney were in the best position to factually know that no juror could have seen the shackles. Questioning the jurors would only have called more attention to what at most was an inadvertent moment. In addition, the Court then took action to ensure that there would not be even an opportunity for a second inadvertent episode. The Court ordered the shackles off of the Petitioner after the fall to avoid any prejudice against the Petitioner during the trial, even though all parties, including Defense, agreed that none of the jurors saw the shackles during the fall.

The Court has stated in State v. Johnson, 2010 NMSC 016, that shackling is prejudicial when the jury knows the defendant is shackled, and the prosecution failed to meet its burden of proving beyond a reasonable doubt that the inherently prejudicial shackling did not contribute to the guilty verdict. Johnson quoting Deck.

That situation is clearly distinguishable from the facts in this case. The jury in Petitioner's trial did not know that he was shackled and did not see his shackles during a fall. Also, the State met its burden of proving Petitioner murdered the victim execution style while he was lying on the ground, thus committing First Degree Murder. There is no way Petitioner could use the fact the jury saw him with shackles to negate all of the evidence and testimony, including his incriminating testimony, to prove that the convicted him because his ankles were shackled.

IV. THE STATE MET ITS BURDEN BY PROVING BEYOND A REASONABLE DOUBT THAT EVERY ELEMENT OF TAMPERING WITH EVIDENCE WAS ESTABLISHED TO CONVICT PETITIONER AT TRIAL

Petitioner argues that the State did not present evidence sufficient to support a finding of guilt beyond a reasonable doubt that Petitioner tampered with evidence. The State disagrees. During testimony, witnesses told the jury that they saw the Petitioner running from the home where he had shot the victim. The State called witnesses to testify that Petitioner ran through an alley near a store called RAGZ2RICHEZ. Investigators found the Petitioner's belongings in a trash bin in the alley. Petitioner also testified to throwing the gun used to murder the victim, as well as his other belongings into the trash can. This evidence supports the conviction for the first count of tampering.

To address the second count of tampering with evidence, the State called Deputy Sandy Loomis to testify at trial. Loomis conducted the investigation after the shooting and during the time Petitioner was in jail after his arrest for the murder. Loomis produced several recorded phone calls Petitioner's made while in the detention facility that clearly proved the Petitioner was tampering with evidence. After Petitioner was arrested, he made calls telling other people to go and collect a gun behind an alleyway. Petitioner made two phone calls on July 15, 2007, one at 18:30 and another at 18:38. On both calls Petitioner was heard telling his "tia" or aunt that "I threw a", "I bought a present, a toy" and then using Spanish saying he placed it behind RAGZ 2 RICHEZ, where you throw the trash. He also asked for Trompas, Tio, or Shorty to go get it. In the second call,

Petitioner requested a male to go get a “Bam Bam” located in the alley of RAGZ 2 RICHEZ.

RAGZ 2 RICHEZ is a store located at 506 West 7th Street. The alley of the store is the same in which Petitioner was seen by witnesses running North after the shooting. The firearm could not be located when investigators returned to locate the gun. On Day 4 of the trial, Petitioner testified to speaking with someone on the prison phone and requesting they go get the gun from the trash can outside of RAGZ 2 RICHEZ. Petitioner also admitted on the stand that he dumped his pants and the gun inside of the dumpster after he fled the scene where he had killed his step father. Petitioner stated the reason why he told someone to go get the gun because he thought that if the police could not locate the gun, he would get out of prison.

Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another. § 30-22-05 NMSA. After the Petitioner testified in trial, his testimony was paramount to the State meeting their burden beyond a reasonable doubt. It could not be clearer to the Court that the State met its burden in proving that the Petitioner committed two counts of tampering with evidence.

V. THE STATE DID NOT COMMIT PROSECUTORIAL MISCONDUCT BECAUSE THE STATEMENTS USED IN CLOSING WERE BASED ON EVIDENCE ADMITTED DURING TRIAL

Prosecutorial misconduct rises to the level of fundamental error when it is so egregious and had such a persuasive and prejudicial effect on the jury's verdict that the defendant was deprived of a fair trial. To find fundamental error, we must be convinced that the prosecutor's conduct created a reasonable probability that the error was a significant factor in the jury's deliberation in relation to the rest of the evidence before them. We will reverse a jury verdict only “(1) when guilt is so doubtful as to shock the conscience, or (2) when there has been an error in the process implicating the fundamental integrity of the judicial process. However, an isolated, minor impropriety

ordinarily is not sufficient to warrant reversal, because a fair trial is not necessarily a perfect one, State v. Allen, 2000 NMSC 002, ¶ 95,

In assessing whether prosecutorial misconduct has occurred based on statements made by a prosecutor at trial, reviewing courts are to evaluate a prosecutor's challenged statements "objectively in the context of the prosecutor's broader argument and the trial as a whole." State v. Sosa, 2009-NMSC-056, ¶ 26, 147 N.M. 351, 223 P.3d 348. Courts are to start their analysis from the long-accepted proposition that "during closing argument, both the prosecution and defense are permitted wide latitude, and the trial court has wide discretion in dealing with and controlling closing argument. State v. Smith, 2001-NMSC-004, ¶ 38, 130 N.M. 117, 19 P.3d 254. "Remarks by the prosecutor must be based upon the evidence or be in response to the defendant's argument." *Id.* Indeed, "statements having their basis in the evidence, together with reasonable inferences to be drawn wherefrom, are permissible and do not warrant reversal." State v. Herrera, 1972-NMCA-068, ¶ 8, 84 N.M. 46, 499 P.2d 364.

Petitioner argues that when the State's prosecutor called Petitioner a liar and later stated he was a menace to society, it was an egregious shock to the conscious of a reasonable person. The States disagrees. The statement that the Petitioner is a liar was proven through evidence at trial, included Petitioner's own statements made during his testimony. In one instance, the Petitioner stated, "my whole left side is disabled, I can barely walk." However, when the State mentions that he left the scene in less than 30 seconds after murdering the victim, Petitioner affirmed. A menace to society statement, taken as a whole according to the trial was also not egregious. Many witnesses testified to Petitioner having issues getting along with the victim, and Petitioner's mother. Petitioner also admitted during trial he violated a trespass order that forbid him to return to Petitioner's mother's home. Petitioner also admitted to telling various people while in jail to collect evidence after the murder. The statements that Petitioner is a liar and a menace are not egregious to shock the conscience of a reasonable person. Therefore we ask the Court to find the State did not commit prosecutorial misconduct during their closing argument.

VI. DISTRICT COURT FINDS THAT DOUBLE JEOPARDY IS NOT RAISED WHEN THE SAME OFFENSE IS CHARGED FOR TWO DIFFERENT INSTANCES.

If defendant commits two discrete acts volatile of same statutory offense, but separated by sufficient indicia of distinctiveness, double jeopardy clause does not preclude court from imposing separate, consecutive punishments for each offense. Swafford v. State, 112 N.M. 2 (1991-NMSC-043). The test is to determine whether the conduct for which there are multiple charges is unitary or distinguishable.

To determine whether two of the same statutory offense occurred, we must undertake a unit-of-prosecution analysis. For unit-of-prosecution challenges, the only basis for dismissal is proof that a suspect is charged with more counts of the same statutory crime than is statutorily authorized. The inquiry is to determine whether the legislature intended multiple punishments for one continuing act. The unit-of-prosecution analysis is done in two steps. First, we review the statutory language for guidance on the unit of prosecution. If the statutory language spells out the unit of prosecution, then we follow the language, and the unit-of-prosecution inquiry is complete. If the language is not clear, then we move to the second step, in which we determine whether a defendant's acts are separated by sufficient "indicia of distinctness" to justify multiple punishments under the same statute. In examining the indicia of distinctness, courts may inquire as to the interests protected by the criminal statute, since the ultimate goal is to determine whether the legislature intended multiple punishments. If the acts are not sufficiently distinct, then the rule of lenity mandates an interpretation that the legislature did not intend multiple punishments, and a defendant cannot be punished for multiple crimes. State v. Bernal, 2006-NMSC-050.

Petitioner argues that the State violated Double Jeopardy when charging him with two counts of Tampering with Evidence. The State opposes this argument. Petitioner does not acknowledge that when leaving the scene of the crime, Petitioner threw clothing and a gun into the trash can near RAGZ 2 RICHEZ. This crime was considered to be the first count of Tampering with Evidence. Then, after being arrested, Petitioner was heard on the prison phone line telling various family members and friends to return to the alleyway to retrieve the gun before the police located the evidence. This is considered another

count of Tampering with Evidence. When asked, during the trial, why he told individuals to retrieve the weapon, Petitioner stated, "I think [they] law enforcement would let me out." Court Transcript October 10, 2013 1:34:56 PM. It is evident in Petitioner's testimony during trial and the acts that Petitioner took immediately after the shooting, Petitioner should be charged with two counts of Tampering with Evidence.

CONCLUSION

The State respectfully requests this Court to affirm the district court's order dismissing the habeas corpus petition. The Petitioner has not raised any violations on the part of the State that would warrant a reversal of his conviction, or finding any error of the court that tried his case in 2013. It is for this reason and the reasons above, the State respectfully requests that the Court dismiss this petition and affirm the Petitioner's conviction.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Andrea Reeb", written over a horizontal line.

ANDREA R. REEB
DISTRICT ATTORNEY

I hereby certify that I caused a true and correct copy of this response to opposing counsel on this 10th day of September, 2018.

Exhibit 1

FEB/28/2013/THU 11:40 AM
02/26/2013 10:39 FAX

jesse r. cosby atty.

FAX No. 5756250364

00002/0002

EXHIBIT 3

2013 MAR -1 PM 3:54

[Signature]
CLERK OF DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

STIPULATED ORDER ON COMPETENCY

THIS MATTER having come before the Court, by way of stipulation of the parties, the State represented by Andrea R. Reeb, Chief Deputy District Attorney, and the defendant represented by his attorney, Jesse R. Cosby, Attorney at Law, and said parties having stipulated to the report dated 1-17-13, from Dr. Richard T. Fink, Ph.D; the parties agree that the Defendant is competent to stand trial in this matter;

IT IS HEREBY ORDERED that Defendant is competent to stand trial in this matter, and that a jury trial shall be scheduled.

[Signature]
Andrea R. Reeb
Chief Deputy District Attorney

[Signature]
Jesse R. Cosby
Attorney for Defense

D.A. No. 11-0539 MC/jwg

[Signature]
TEDDY L. HARTLEY
DISTRICT JUDGE, DIVISION III

Exhibit 2

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED

Description **ST. VS ALBERT RAMIREZ CR-07-434**

2013 OCT 10 PM 4:45

THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

Albert Ramirez
Defendant

CAUSE NO: D-0905-CR-2007-00434
JUDGE: TEDDY L. HARTLEY
DATE: OCTOBER 10, 2013

STATE OF NEW MEXICO,
Plaintiff / Petitioner,

vs.

ALBERT RAMIREZ,
Defendant, Raspondent,

TYPE OF PROCEEDING: MOTIONS ON DAY 4 OF JURY TRIAL
ATTORNEY FOR PLAINTIFF: MATTHEW CHANDLER, JAROD MORRIS
ATTORNEY FOR DEFENDANT: JESSE COSBY
OTHERS PRESENT:
COURT MONITOR: IRENE J. RODRIGUEZ

NOTICE: This log is not the official record. The official record is the audio cd.
The log is created to assist in locating information on the cd. The log is not a
verbatim record of the proceedings and could contain errors and omissions.

Date **10/10/2013**

Location **CR1 CHAMBERS**

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED , IT IS THE TIMELINE,
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THRE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE , I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR, FINK , IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING , AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
<u>10:58:56 AM</u>	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
<u>11:00:15 AM</u>	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
<u>11:01:15 AM</u>	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
<u>11:01:44 AM</u>	RECESS	
<u>3:44:06 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
<u>3:44:27 PM</u>	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
<u>3:45:47 PM</u>	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
<u>3:46:20 PM</u>	CHANDLER	WE HAVE CASELAW
<u>3:46:30 PM</u>	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
<u>3:46:46 PM</u>	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
<u>3:47:42 PM</u>	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
<u>3:48:58 PM</u>	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
<u>3:49:17 PM</u>	COURT	BASIS UPON
<u>3:49:34 PM</u>	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
<u>3:50:52 PM</u>		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
<u>3:51:10 PM</u>	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
<u>3:51:27 PM</u>	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
<u>3:52:06 PM</u>	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
<u>3:52:52 PM</u>	OFF RECORD	

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
<u>3:54:07 PM</u>	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
<u>3:54:50 PM</u>	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
<u>3:55:42 PM</u>	COSBY	YOU ARE CALLING THEM ON REBUTTAL
<u>3:56:04 PM</u>	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
<u>3:56:17 PM</u>	MORRIS	RESPONDS
<u>3:56:36 PM</u>	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
<u>3:58:39 PM</u>	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
<u>3:59:02 PM</u>	CHANDLER	IF WE CALL OUR EXPERTS
<u>3:59:11 PM</u>	COURT	IT IS A MATTER OF JUSTICE
<u>3:59:32 PM</u>	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
<u>3:59:55 PM</u>	CHANDLER	WE DID NOT DROP IT JUST NOW,
<u>4:00:09 PM</u>	COURT	THOSE REPORTS ARE AGED
<u>4:01:04 PM</u>	CHANDLER	WHAT HE IS DOING TODAY
<u>4:01:23 PM</u>	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
<u>4:02:03 PM</u>	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
<u>4:02:25 PM</u>	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
<u>4:03:14 PM</u>	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION, IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
<u>4:05:00 PM</u>	CHANDLER	THE MOTION THAT MR COSBY MADE
<u>4:05:10 PM</u>	COURT	THERE IS EVIDENCE, THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
<u>4:05:51 PM</u>	CHANDLER	
<u>4:05:59 PM</u>	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
<u>4:06:31 PM</u>	COSBY	SIR-REBUTTAL IS MATTERS
<u>4:06:50 PM</u>	CHANDLER	HE CHOSE NOT TO CALL WITNESS
<u>4:07:21 PM</u>	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
<u>4:08:21 PM</u>	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
<u>4:08:49 PM</u>	COURT	COMMENTS

10/10/2013

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
<u>4:09:12 PM</u>	CHANDLER	ONE OF THE DOCTOR'S SAY'S HE IS MELINGERING
<u>4:09:35 PM</u>	COURT	GIVE ME 15 MINUTES
<u>4:09:42 PM</u>	RECESS	

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2018 DEC 14 AM 10:57

ALBERT JOSE RAMIREZ,

Petitioner,


CLERK DISTRICT COURT

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, the Court having appointed the Law Office of the Public Defender to represent the Petitioner, Petitioner's Amended Petition for Writ of Habeas Corpus having been filed through Counsel on May 18, 2018, and the Court limiting its analysis to said Amended Petition, the State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, a Preliminary Disposition Hearing was held on October 29, 2018, Petitioner appeared telephonically with Petitioner's Counsel, Liane E. Kerr, Attorney at Law, the State appeared by and through Brian S. Stover, Chief Deputy District Attorney, this Court having heard argument and taking its decision under advisement, having reviewed the pleadings, researched the issues and the Court being fully advised and after due deliberation, FINDS;

1. Petitioner is represented by Liane E. Kerr, Attorney at Law. Through Counsel, Petitioner filed an Amended Petition for Writ of Habeas Corpus on May 18, 2018.

2. This Court notes that the New Mexico Supreme Court found that, at least to a portion of the issues raised by Petitioner, that Petitioner retained the ability to bring such a claim via a habeas corpus proceeding. *State v. Ramirez*, 2016 WL 7029226, ¶ 32.
3. This Court entered its Notice that the Court is Not Dismissing Any Portion of the Amended Petition at this Time and Order for State to Respond to Amended Petition for Writ of Habeas Corpus on June 15, 2018.
4. Per Rule 5-802(H)(3) NMRA, the Ninth Judicial District Attorney's Office was ordered to file a response to Petitioner's Amended Petition for Writ of Habeas Corpus within one-hundred and twenty (120) days from the date the Amended Petition for Writ of Habeas Corpus was filed (May 18, 2018).
5. The State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, 2018.
6. This matter was set for a Preliminary Disposition Hearing on October 29, 2018. This Court heard argument from both parties.
7. Following the Preliminary Disposition Hearing, this "court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall dispose of the petition without an evidentiary hearing, but may ask for briefs and/or oral arguments on legal issues." Rule 5-802(H)(4) NMRA. This Court does hereby rule that this matter is ripe for a decision. This Court finds that an evidentiary hearing is not required and no further briefs/argument are required.
8. A review of the file shows that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. The Honorable Judge Teddy Hartley presided over the trial in this matter.

9. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction in its decision, *State v. Ramirez*, 2016 WL 7029226. Said decision is incorporated by reference herein as though fully set forth.
10. In his Amended Petition, Petitioner asks this Court to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.
11. There are six issues raised in the Amended Petition: 1). Was Petitioner denied his Sixth Amendment right to effective assistance of counsel and his right of compulsory process when his trial attorney failed to call Dr. Maxann Shwartz, Ph.D (hereinafter referred to as "Dr. Shwartz") to testify at either the competency hearing or at trial?; 2). Were Petitioner's convictions obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced?; 3). Did it violate Defendant's due process rights when jurors observed him shackled during trial?; 4). Was there sufficient evidence to convict the Defendant?; 5). Was there prosecutorial misconduct during the trial in this matter?; and 6). Was Defendant's right to be free from double jeopardy violated when he was convicted of two counts of Tampering with Evidence?
12. The State's Response addressed all six issues and this Court heard argument related to all six issues at the Preliminary Hearing on October 29, 2018.
13. Petitioner's first argument is that he was denied effective assistance of counsel. This Court notes that Petitioner was originally represented by Brett Carter, Law Office of the Public Defender. Later, Petitioner was represented by Jesse Cosby, Attorney at Law.

14. The issue of ineffective assistance of counsel was directly considered by the Supreme Court. The Supreme Court ruled that "the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant's ability to bring such a claim via habeas corpus proceedings." *State v. Ramirez*, 2016 WL 7029226 ¶ 32.
15. Through the above described process related to Petitioner's Petition for Writ of Habeas Corpus, this Court finds that Petitioner has been given the opportunity to establish his record related to ineffective assistance of counsel.
16. Petitioner argues that it was ineffective assistance of counsel to not call Dr. Shwartz as a witness at a September 15, 2008 Competency Hearing. Leading up to that hearing, Mr. Carter filed a Notice of Filing to Determine Competency of the Defendant to Stand Trial on January 14, 2008. On March 10, 2018, Petitioner was evaluated by Dr. Schwartz who rendered an opinion that Petitioner was incompetent. The record reflects that Dr. Schwartz spent a matter of hours with the Petitioner during the course of one day. The parties then stipulated that Defendant was incompetent. An Order for Commitment to the New Mexico Behavioral Health Institute at Las Vegas for Treatment to Attain Competency to Stand Trial was entered on April 17, 2008. On June 5, 2008, Petitioner was admitted to the New Mexico Behavioral and Health Institute in Las Vegas, NM, for treatment to attain competency. Petitioner was treated by Dr. Joanne Burness, Ph.D (hereinafter referred to as Dr. Burness). On August 18, 2008, Dr. Burness rendered an opinion that Petitioner was competent to stand trial. The record reflects that Petitioner was at the New Mexico Behavioral and Health Institute from June 5, 2008 through

August 19, 2008 (75 days). A Competency Hearing was held on September 15, 2008. Petitioner was represented by Brett Carter. Dr. Burness testified at length about Petitioner's competency and the process that Petitioner went through to attain competency. The Court learned that Dr. Burness evaluated Petitioner and met with him on a number of occasions. She spent additional time evaluating and observing Petitioner. She also learned additional information from others regarding the Petitioner. Amongst other details related to Petitioner's competency, Dr. Burness testified that she believed Petitioner was malingering due to his actions, statements and numerous comments made by Petitioner about getting his charges dismissed once he was found to be incompetent. Petitioner was submitted to testing related specifically to malingering and testimony related to those tests was presented to the Court. Brett Carter cross examined Dr. Burness in great detail. Mr. Carter did not call Dr. Shwartz as a witness. Following the hearing, Petitioner was deemed competent by Judge Hartley. An Order finding Petitioner competent to stand trial was entered on September 16, 2008.

17. This Court notes that Mr. Carter would have been aware that, as of the date of the competency hearing, more than six (6) months had passed since Dr. Shwartz had met with the Petitioner for a matter of hours. Further, Mr. Carter would have been aware that, since Dr. Shwartz met with Petitioner, he had spent seventy-five (75) days at the New Mexico Behavioral and Health Institute being evaluated and observed by Dr. Burness and others. Dr. Burness had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc.
18. This Court finds that Mr. Carter's decision not call Dr. Shwartz as a witness was a strategic decision.

19. After an appeal related to the withdrawal of a plea agreement, Jesse Cosby entered his appearance on behalf of the Petitioner in August, 2011.
20. Competency continued to be an issue in this matter including a request by Mr. Cosby to have Petitioner's competency reevaluated in September 22, 2011. Petitioner received further forensic evaluation and treatment at the New Mexico Behavioral and Health Institute. By the time of trial, the parties had stipulated that Petitioner was competent and a Stipulated Order on Competency was filed on March 1, 2013.
21. Trial took place from October 7, 2013 through October 11, 2013. Testimony related to Petitioner's mental health was presented during trial. Petitioner argues that it was ineffective assistance of counsel for Mr. Cosby to not call Dr. Shwartz as a witness during the trial. Some of the factors that may have went into Defense Counsel's decision to not call Dr. Shwartz at trial are reflected on the record. As part of Petitioner's defense, Mr. Cosby elicited testimony from lay witnesses about Petitioner's mental health. In the afternoon on the fourth day of trial, the State began to prepare for up to two expert rebuttal witnesses, including Dr. Burness, to testify regarding Petitioner's mental health and specifically about Petitioner's malingering. Mr. Cosby argued that, if the State called said rebuttal witnesses, it would be necessary for him to call Dr. Shwartz to give surrebuttal testimony. After extensive argument, Defense Counsel began to maneuver in such a way that he would agree not to call Dr. Shwartz if the State did not call their rebuttal witnesses. In the end, Judge Hartley ruled that there would be no rebuttal witnesses and no instruction on competency. Judge Hartley even explained this decision to Petitioner, on the record, outside the presence of the jury.

22. This Court notes that Mr. Cosby would have been aware that, as of the first day of trial, it had been 2,037 days since Dr. Shwartz had met with the Petitioner. Further, Mr. Cosby would have been aware that, in the intervening time since Dr. Shwartz met with Petitioner, he had spent a considerable amount of time at the New Mexico Behavioral and Health Institute being evaluated and observed. Because of this, other mental health professionals had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc. The State argues that Dr. Shwartz's testimony would have been irrelevant.
23. This Court finds that Mr. Cosby's decision not to present Dr. Shwartz's testimony related to Petitioner's mental state at the time of the commission of the offense, malingering, etc. was a strategic decision.
24. This Court notes the record in this matter reflects a statement from Judge Hartley toward the end of the trial that Mr. Cosby had represented Petitioner expertly and that the handling of the mental health expert witnesses was done in a fair way.
25. As noted above, the decisions made by Mr. Carter and Mr. Cosby related to the testimony of Dr. Shwartz were strategic decisions. Counsel's decisions in these areas are trial tactics and counsel is afforded wide latitude as they represented the Petitioner.¹

¹ Courts generally give great deference to counsel's trial decisions, and mistakes of trial strategy or tactics do not render counsel's performance ineffective. The attorney has the basic responsibility for the conduct of the trial on behalf of his client, and he is given wide latitude in the discharge of this responsibility. Effective representation does not require that the defendant prevail or that his lawyer be infallible, and the courts are loathe to judge attorneys on the basis of hindsight. Thus, the mere fact that trial counsel took an action which another attorney might not have taken, or that trial counsel failed to take some action which might have proved advantageous, does not render him incompetent or ineffective. Generally, the attorney's performance will be held ineffective only when there is no tactical or strategic justification for his conduct of the trial. *Ineffective Assistance of Counsel*, 5 Am. Jur. Proof of Facts 2d 267 (Originally published in 1975; updated September, 2015).

26. A defendant is denied effective assistance of counsel only where it can be shown that defense counsel has failed to exercise the skill, judgment and diligence of a reasonably competent defense attorney. *State v. Orona*, 1982-NMSC-002. And the petitioner must also prove that the incompetent representation prejudiced the petitioner's case, rendering the trial court's results unreliable. *State v. Lopez*, 1996-NMSC-036. The main question is whether the allegedly incompetent representation prejudiced the case such that, but for counsel's error, there is a reasonable probability that the result of the conviction proceedings would have been different. *Lopez*, 1996-NMSC-036, ¶ 26. *State v. Baca*, 1997-NMSC-045 (overruled on other grounds).
27. This Court finds that Petitioner has failed to show that, but for counsel's "error," there is a reasonable probability that the result of the conviction proceedings would have been different. This Court finds that the Petitioner cannot show conduct which was not that of a reasonable, competent attorney. This Court is of the opinion that no prejudice to the Petitioner occurred in this regard. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
28. Petitioner's second issue is that the district court erred in admitting evidence of prior acts, in violation of Rule 11-402 NMRA. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 44-60. The Supreme Court ruled that Judge Hartley did not abuse his discretion in admitting the evidence of Defendant's prior acts. In his Amended Petition, Petitioner raises the same prior bad acts that were reviewed by the Supreme Court; with the addition of a claim related to the Petitioner attempting to purchase a firearm.

29. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to the claim related to the purchase of a firearm, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to Petitioner's prior bad acts, this issue cannot be collaterally attacked through a post-conviction Petition for Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

30. Petitioner's third issue is that he was prejudiced when members of the jury may have seen his leg restraints. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 39-43. The Supreme Court ruled that "Because it is unclear whether the jury saw the leg restraints and if they did, there is no evidence

that it was anything other than inadvertent or insignificant exposure, this case is not the exceptional type that goes to the violation of the foundation of presumption of innocence. Further, this case does not shock the conscience as Defendant's guilt is supported by substantial evidence in the record, including eyewitness testimony and evidence of Defendant's motive and a pattern of conduct toward Robledo . . . Accordingly, there was no fundamental error by the district court." *Id.*, ¶43

31. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to any additional times that the jury may have seen Petitioner's restraints, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to the jury potentially seeing Petitioner's leg restraints, this issue cannot be collaterally attacked through a post-conviction Petition for

Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

32. Petitioner's fourth argument is that there was insufficient evidence to convict him at trial.

After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. There was sufficient evidence presented to support Petitioner's convictions. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

33. Petitioner's fifth argument is that there was prosecutorial misconduct during the trial in

this matter. Petitioner raises comments made by the State about Petitioner being a liar and a menace to society. The Supreme Court, in *State v. Ramirez*, 2016 WL 7029226, ¶ 64, addressed a similar argument raised by Petitioner. The Supreme Court found that, "reviewing all of the comments made, in the context in which they were made, and taking into account those comments' potential effect on the jury, the questions were isolated and minor. Accordingly, the prosecutor's remarks did not deprive Defendant of a fair trial." This Court adopts the Supreme Court's finding. The State's remarks did not deprive the Defendant of a fair trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.


34. Petitioner's sixth argument is that his convictions violate double jeopardy. Petitioner

argues that it was error that he he convicted of two counts of tampering with evidence. The Double Jeopardy Clause provides that no one will be "twice put in jeopardy" for the same crime. Principles of double jeopardy protect against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6.

Petitioner alleges that he has received multiple punishments for the same offense. If conduct is separate and distinct, there is no violation of double jeopardy and the inquiry is at an end. *See Id.* ¶ 28. Evidence in this matter showed that one count of tampering with evidence was based upon Petitioner's actions related to a firearm and the other count of tampering was based upon Petitioner's actions related to clothing. This Court finds that each count of tampering with evidence was based upon a distinct act, separated by time and space, and involved different pieces evidence. Therefore, Petitioner's convictions were not premised on unitary conduct, and no double jeopardy violation occurred. *Swafford*, 1991-NMSC-043, ¶ 28. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

DECISION

After examining the Amended Petition, exhibits, prior proceedings, having heard argument from the parties, requiring no further hearing or briefing, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802 NMRA, the Petitioner's Amended Petition for Writ of Habeas Corpus filed on May 18, 2018 is DENIED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

12-501

ORIGINAL

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO RAMIREZ

Defendant-Petitioner,

S.Ct. No. S-1-SC-37501
(leave blank; court will assign)

VS.

JOHN GAY
(Name of Warden)

District Ct. No.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

SUPREME COURT OF NEW MEXICO
FILED

JAN 28 2019

SPJ

ALBERTO RAMIREZ
Defendant

Petitioner pro se

Alberto Ramirez

P.O. Box 1059
SANTA FE, NM 87504

EXHIBIT

AA

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

(
address information
)

PETITION FOR WRIT OF CERTIORARI TO THE
9th **DISTRICT COURT OF NEW MEXICO**

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ALBERTO RAMIREZ VS. JOHNGAY D-905-CR-2007-434
(your name v. Warden's name), District Court No. _____ filed on
JAN 27th 2017

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

A. denying defendant his Sixth Amendment Right to effective assistance of counsel and compulsory process. When his attorney refused to call Dr. MARIONNE SWARTZ to testify at either competency hearing or at trial.

B. Whether petitioner's criminal convictions were obtained in violation of his state and federal rights to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404 B?

- C. Whether Being Shackled during trial and Jurors observed defendant in shackles as He Fell and denied due process?
- D. Sufficiency of Evidence?
- E. prosecutorial misconduct. While prosecutor could defendant a message to Society and a lie and said defendant did legal research to get the jury to buy his story.

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

OPEN COURT MURDER 1st degree MURDER
2 COUNTS TAMPERING WITH EVIDENCE
LIFE PLUS 6 YRS.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

NONE. IM NOT SURE.
February 7th 2014 the Supreme
Court of NEW MEXICO^{State} US. Ramirez
S. Ct. No. 34, 576 - Court issued Jan 18th 2017.

3. Tell the story of what happened in your court case:

My ATTORNEY would not speak to ME which
would not file motions for change of
venue even though extensive media
I fell in front of jury because
CONFLICT OF INTEREST

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

I was shackled to table Sheriff Counsel, manipulated me to say NO I did NOT fail, Trial lawyer said IF I REFUSE to TAKE PLEA He would NOT provide effective assistance. prior bad acts Evidence admitted.

TRIAL lawyer refused to call MAXWELL SWARTZ to raise lack of capacity or insanity defense
**BASIS FOR GRANTING THIS PETITION FOR
 WRIT OF CERTIORARI TO THE DISTRICT COURT**

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

petitioner was denied his Sixth Amendment Right to counsel effective assistance, and his right of compulsory process when his attorney failed to call Maxwell Swartz to rebut the state's mere assertions of maximizing and to testify at trial about defendant state of mind

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

IS it INEFFECTIVE ASSISTANCE to ignore a
 defendant's right to compulsory process?
 POINT 2:

.....
 Prior bad acts evidence should
 not been admitted introduced and
 their introduction denied the petitioner
 his right to a fair trial.

POINT 3:

.....
 The petitioner was likely prejudiced
 and denied his right to a fair trial
 when his fall was a direct result of being
 shocked and his attorney did not seek
 to have jurors polled regarding whether
 they saw the shocks or not.

(Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

4. Sufficiency of Evidence.
JACKSON. V. VIRGINIA 443,
U.S. 307 - 317 - 18 1979
5. Prosecutorial Misconduct
State v. SOSA, 2009 - NMSC
056 . 35, 147 NM. 351, 223
P.3d, 348. Defendant was
called a menace to society
in closing Argument and
during cross Examination asked
about doing legal Research.
6. Double Jeopardy - State v. deGraaf
2006, NMSC - 011, 34, 134 NM
211, 131 P3d. 61.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO ..., NM R CR Form 9-702

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) Evidentiary Hearing or retrial grant attorney for defendant

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

AR

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Alberto Romero

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 25th day of JAN 2019.

ALBERTO ROMIREZ 69597

Defendant-Petitioner, pro se

PO-Box 1059
SANTA FE, NM. 87504

Credits

[Adopted effective Dec. 31, 2014.]

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

NMRA, Form 9-705, NM R CR Form 9-705

State court rules are current with amendments received through August 1, 2017.

End of Document

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LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

DATE. January 10, 2019

TO. Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

*Received
Jan 10th
2019*

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

Enclosed please find the following:

Order Denying Petitioner's Petition for Writ of Habeas

Please:

- ☐ File and return endorsed copy to this office.
- ☐ Sign and return to this office
- ☐ Check in the amount of \$_____ for
- ☐ Per your request
- ☒ For your information.
- ☐ Please contact the office to schedule an appointment.
- ☐ Pay vendor directly.
- ☐ Other:

Sincerely,


Yareli C. Gagne
Legal Assistant to
LIANE E. KERR LLC

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2018 DEC 14 AM 10:57

ALBERT JOSE RAMIREZ,

Petitioner,

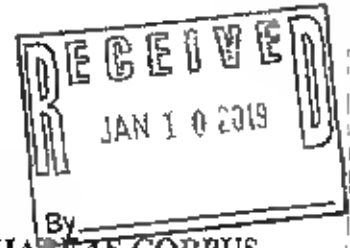
vs

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

Shirley B. Surge
CLERK DISTRICT COURT



ORDER DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, the Court having appointed the Law Office of the Public Defender to represent the Petitioner, Petitioner's Amended Petition for Writ of Habeas Corpus having been filed through Counsel on May 18, 2018, and the Court limiting its analysis to said Amended Petition, the State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, a Preliminary Disposition Hearing was held on October 29, 2018, Petitioner appeared telephonically with Petitioner's Counsel, Liane E. Kerr, Attorney at Law, the State appeared by and through Brian S. Stover, Chief Deputy District Attorney, this Court having heard argument and taking its decision under advisement, having reviewed the pleadings, researched the issues and the Court being fully advised and after due deliberation, FINDS,

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11. There are six issues raised in the Amended Petition: 1). Was Petitioner denied his Sixth Amendment right to effective assistance of counsel and his right of compulsory process when his trial attorney failed to call Dr. Maxann Schwartz, Ph.D (hereinafter referred to as "Dr. Schwartz") to testify at either the competency hearing or at trial?; 2). Were Petitioner's convictions obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced?; 3). Did it violate Defendant's due process rights when jurors observed him shackled during trial?; 4). Was there sufficient evidence to convict the Defendant?; 5). Was there prosecutorial misconduct during the trial in this matter?; and 6). Was Defendant's right to be free from double jeopardy violated when he was convicted of two counts of Tampering with Evidence?
12. The State's Response addressed all six issues and this Court heard argument related to all six issues at the Preliminary Hearing on October 29, 2018.
13. Petitioner's first argument is that he was denied effective assistance of counsel. This Court notes that Petitioner was originally represented by Brett Carter, Law Office of the Public Defender. Later, Petitioner was represented by Jesse Cosby, Attorney at Law.

14. The issue of ineffective assistance of counsel was directly considered by the Supreme Court. The Supreme Court ruled that “the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant’s ability to bring such a claim via habeas corpus proceedings.” *State v. Ramirez*, 2016 WL 7029226 ¶ 32.
- 15 Through the above described process related to Petitioner’s Petition for Writ of Habeas Corpus, this Court finds that Petitioner has been given the opportunity to establish his record related to ineffective assistance of counsel.
- 16 Petitioner argues that it was ineffective assistance of counsel to not call Dr. Shwartz as a witness at a September 15, 2008 Competency Hearing. Leading up to that hearing, Mr. Carter filed a Notice of Filing to Determine Competency of the Defendant to Stand Trial on January 14, 2008. On March 10, 2018, Petitioner was evaluated by Dr. Schwartz who rendered an opinion that Petitioner was incompetent. The record reflects that Dr. Schwartz spent a matter of hours with the Petitioner during the course of one day. The parties then stipulated that Defendant was incompetent. An Order for Commitment to the New Mexico Behavioral Health Institute at Las Vegas for Treatment to Attain Competency to Stand Trial was entered on April 17, 2008. On June 5, 2008, Petitioner was admitted to the New Mexico Behavioral and Health Institute in Las Vegas, NM, for treatment to attain competency. Petitioner was treated by Dr. Joanne Burness, Ph.D (hereinafter referred to as Dr. Burness). On August 18, 2008, Dr. Burness rendered an opinion that Petitioner was competent to stand trial. The record reflects that Petitioner was at the New Mexico Behavioral and Health Institute from June 5, 2008 through

August 19, 2008 (75 days). A Competency Hearing was held on September 15, 2008. Petitioner was represented by Brett Carter. Dr. Burness testified at length about Petitioner's competency and the process that Petitioner went through to attain competency. The Court learned that Dr. Burness evaluated Petitioner and met with him on a number of occasions. She spent additional time evaluating and observing Petitioner. She also learned additional information from others regarding the Petitioner. Amongst other details related to Petitioner's competency, Dr. Burness testified that she believed Petitioner was malingering due to his actions, statements and numerous comments made by Petitioner about getting his charges dismissed once he was found to be incompetent. Petitioner was submitted to testing related specifically to malingering and testimony related to those tests was presented to the Court. Brett Carter cross examined Dr. Burness in great detail. Mr. Carter did not call Dr. Schwartz as a witness. Following the hearing, Petitioner was deemed competent by Judge Hartley. An Order finding Petitioner competent to stand trial was entered on September 16, 2008.

- 17 This Court notes that Mr. Carter would have been aware that, as of the date of the competency hearing, more than six (6) months had passed since Dr. Schwartz had met with the Petitioner for a matter of hours. Further, Mr. Carter would have been aware that, since Dr. Schwartz met with Petitioner, he had spent seventy-five (75) days at the New Mexico Behavioral and Health Institute being evaluated and observed by Dr. Burness and others. Dr. Burness had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc.
- 18 This Court finds that Mr. Carter's decision not call Dr. Schwartz as a witness was a strategic decision.

19. After an appeal related to the withdrawal of a plea agreement, Jesse Cosby entered his appearance on behalf of the Petitioner in August, 2011.
20. Competency continued to be an issue in this matter including a request by Mr. Cosby to have Petitioner's competency reevaluated in September 22, 2011. Petitioner received further forensic evaluation and treatment at the New Mexico Behavioral and Health Institute. By the time of trial, the parties had stipulated that Petitioner was competent and a Stipulated Order on Competency was filed on March 1, 2013.
21. Trial took place from October 7, 2013 through October 11, 2013. Testimony related to Petitioner's mental health was presented during trial. Petitioner argues that it was ineffective assistance of counsel for Mr. Cosby to not call Dr. Shwartz as a witness during the trial. Some of the factors that may have went into Defense Counsel's decision to not call Dr. Shwartz at trial are reflected on the record. As part of Petitioner's defense, Mr. Cosby elicited testimony from lay witnesses about Petitioner's mental health. In the afternoon on the fourth day of trial, the State began to prepare for up to two expert rebuttal witnesses, including Dr. Burness, to testify regarding Petitioner's mental health and specifically about Petitioner's malingering. Mr. Cosby argued that, if the State called said rebuttal witnesses, it would be necessary for him to call Dr. Shwartz to give surrebuttal testimony. After extensive argument, Defense Counsel began to maneuver in such a way that he would agree not to call Dr. Shwartz if the State did not call their rebuttal witnesses. In the end, Judge Hartley ruled that there would be no rebuttal witnesses and no instruction on competency. Judge Hartley even explained this decision to Petitioner, on the record, outside the presence of the jury.

22. This Court notes that Mr. Cosby would have been aware that, as of the first day of trial, it had been 2,037 days since Dr. Schwartz had met with the Petitioner. Further, Mr. Cosby would have been aware that, in the intervening time since Dr. Schwartz met with Petitioner, he had spent a considerable amount of time at the New Mexico Behavioral and Health Institute being evaluated and observed. Because of this, other mental health professionals had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc. The State argues that Dr. Schwartz's testimony would have been irrelevant.
23. This Court finds that Mr. Cosby's decision not to present Dr. Schwartz's testimony related to Petitioner's mental state at the time of the commission of the offense, malingering, etc. was a strategic decision.
24. This Court notes the record in this matter reflects a statement from Judge Hartley toward the end of the trial that Mr. Cosby had represented Petitioner expertly and that the handling of the mental health expert witnesses was done in a fair way.
25. As noted above, the decisions made by Mr. Carter and Mr. Cosby related to the testimony of Dr. Schwartz were strategic decisions. Counsel's decisions in these areas are trial tactics and counsel is afforded wide latitude as they represented the Petitioner.¹

¹ Courts generally give great deference to counsel's trial decisions, and mistakes of trial strategy or tactics do not render counsel's performance ineffective. The attorney has the basic responsibility for the conduct of the trial on behalf of his client, and he is given wide latitude in the discharge of this responsibility. Effective representation does not require that the defendant prevail or that his lawyer be infallible, and the courts are loathe to judge attorneys on the basis of hindsight. Thus, the mere fact that trial counsel took an action which another attorney might not have taken, or that trial counsel failed to take some action which might have proved advantageous, does not render him incompetent or ineffective. Generally, the attorney's performance will be held ineffective only when there is no tactical or strategic justification for his conduct of the trial. *Ineffective Assistance of Counsel*, 5 Am. Jur. Proof of Facts 2d 267 (Originally published in 1975; updated September, 2015).

26. A defendant is denied effective assistance of counsel only where it can be shown that defense counsel has failed to exercise the skill, judgment and diligence of a reasonably competent defense attorney. *State v. Orona*, 1982-NMSC-002. And the petitioner must also prove that the incompetent representation prejudiced the petitioner's case, rendering the trial court's results unreliable. *State v. Lopez*, 1996-NMSC-036. The main question is whether the allegedly incompetent representation prejudiced the case such that, but for counsel's error, there is a reasonable probability that the result of the conviction proceedings would have been different. *Lopez*, 1996-NMSC-036, ¶ 26. *State v. Baca*, 1997-NMSC-045 (overruled on other grounds).
27. This Court finds that Petitioner has failed to show that, but for counsel's "error," there is a reasonable probability that the result of the conviction proceedings would have been different. This Court finds that the Petitioner cannot show conduct which was not that of a reasonable, competent attorney. This Court is of the opinion that no prejudice to the Petitioner occurred in this regard. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
28. Petitioner's second issue is that the district court erred in admitting evidence of prior acts, in violation of Rule 11-402 NMRA. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 44-60. The Supreme Court ruled that Judge Hartley did not abuse his discretion in admitting the evidence of Defendant's prior acts. In his Amended Petition, Petitioner raises the same prior bad acts that were reviewed by the Supreme Court; with the addition of a claim related to the Petitioner attempting to purchase a firearm.

29. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to the claim related to the purchase of a firearm, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to Petitioner's prior bad acts, this issue cannot be collaterally attacked through a post-conviction Petition for Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

30. Petitioner's third issue is that he was prejudiced when members of the jury may have seen his leg restraints. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 39-43. The Supreme Court ruled that "Because it is unclear whether the jury saw the leg restraints and if they did, there is no evidence

that it was anything other than inadvertent or insignificant exposure, this case is not the exceptional type that goes to the violation of the foundation of presumption of innocence. Further, this case does not shock the conscience as Defendant's guilt is supported by substantial evidence in the record, including eyewitness testimony and evidence of Defendant's motive and a pattern of conduct toward Robledo . . . Accordingly, there was no fundamental error by the district court." *Id.*, ¶43

- 31 Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to any additional times that the jury may have seen Petitioner's restraints, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to the jury potentially seeing Petitioner's leg restraints, this issue cannot be collaterally attacked through a post-conviction Petition for

Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

32. Petitioner's fourth argument is that there was insufficient evidence to convict him at trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. There was sufficient evidence presented to support Petitioner's convictions. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
33. Petitioner's fifth argument is that there was prosecutorial misconduct during the trial in this matter. Petitioner raises comments made by the State about Petitioner being a liar and a menace to society. The Supreme Court, in *State v. Ramirez*, 2016 WL 7029226, ¶ 64, addressed a similar argument raised by Petitioner. The Supreme Court found that, "reviewing all of the comments made, in the context in which they were made, and taking into account those comments' potential effect on the jury, the questions were isolated and minor. Accordingly, the prosecutor's remarks did not deprive Defendant of a fair trial." This Court adopts the Supreme Court's finding. The State's remarks did not deprive the Defendant of a fair trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
34. Petitioner's sixth argument is that his convictions violate double jeopardy. Petitioner argues that it was error that he be convicted of two counts of tampering with evidence. The Double Jeopardy Clause provides that no one will be "twice put in jeopardy" for the same crime. Principles of double jeopardy protect against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6.

Petitioner alleges that he has received multiple punishments for the same offense. If conduct is separate and distinct, there is no violation of double jeopardy and the inquiry is at an end. *See Id.* ¶ 28. Evidence in this matter showed that one count of tampering with evidence was based upon Petitioner's actions related to a firearm and the other count of tampering was based upon Petitioner's actions related to clothing. This Court finds that each count of tampering with evidence was based upon a distinct act, separated by time and space, and involved different pieces evidence. Therefore, Petitioner's convictions were not premised on unitary conduct, and no double jeopardy violation occurred. *Swafford*, 1991-NMSC-043, ¶ 28. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

DECISION

After examining the Amended Petition, exhibits, prior proceedings, having heard argument from the parties, requiring no further hearing or briefing, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802 NMRA, the Petitioner's Amended Petition for Writ of Habeas Corpus filed on May 18, 2018 is DENIED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

S-1-SC- 37501

STATE OF NEW MEXICO

IN THE NINTH JUDICIAL DISTRICT COURT

COUNTY OF CURRY

STATE OF NEW MEXICO,

2019 SEP 10 PM 2:06

Salvador Sanchez
ALLEN DISTRICT COURT

Plaintiff,

vs.

Exhibits

ALBERT RAMIREZ,

SUPREME COURT OF NEW MEXICO
FILED

No. D-0905-CR-200700434

Defendant.

JAN 28 2019

[Signature]
STATE'S RESPONSE

TO DEFENDANT'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the State of New Mexico by and through her District Attorney for the 9th Judicial District, Andrea Reeb, and respectfully requests this honorable court to deny the defendant's petition for a writ of Habeas Corpus and in support of this request would offer the following:

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ARGUMENT

1. PETITIONER'S TRIAL ATTORNEY MADE STRATEGIC AND TACTICAL DECISIONS DURING TRIAL, THEREFORE THERE IS NEITHER A VIOLATION OF INEFFECTIVE ASSISTANCE OF COUNSEL OR OF THE COMPULSORY PROCESS

A. Introduction and standard of review.

Petitioner claims that the Sixth Amendment Right to Effective Assistance of Counsel and Right to Compulsory Process, furnish Petitioner with the ability to raise ineffective counsel because Petitioner's trial counsel refused to call an expert witness to testify regarding the Petitioner's mental status. The Appellate Court reviews constitutional issues de novo. State v. Belanger, 2009-NMSC-025, ¶ 8, 146 N.M. 357, 210 P.3d 783.

"The Sixth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, guarantees not only the right to counsel but "the right to the effective assistance of counsel." Patterson v. LeMaster, 2001-NMSC-013, ¶ 16, 130 N.M. 179, 183, 21 P.3d 1032, 1036. The purpose of guaranteeing effective assistance of counsel is to ensure fairness throughout the course of a criminal case. Id. A prima facie case of ineffective assistance is made by showing that defense counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced. Id. There are two prongs to assess the counsel's reasonableness. A prima facie case of ineffective assistance of counsel requires that a defendant or petitioner in a habeas corpus proceeding is required to establish (1) petitioner's counsel's performance fell below a reasonably competent attorney, and (2) prejudice resulted from the Counsel's incompetence. See State v. Cordova, 2014-NMCA-081, ¶ 9, 331 P.3d 980, 983; State v. Manuelito, 1993-NMCA-045, ¶ 6, 115 N.M. 394, 395, 851 P.2d 516, 517; Duncan v. Kerby, 1993-NMSC-011, ¶ 10, 115 N.M. 344, 348, 851 P.2d 466, 470. To determine whether there was resulting prejudice, the Court must consider the totality of evidence

presented. State v. Price, 1986 NMCA 036, 104 N.M. 703, 709, 726 P.2d 857, 863 (Ct.App.1986).

There are two additional factors taken into account when performing the evaluation: strategic decisions made by defendant's counsel and unreliability of trial resulting from counsel's prejudice. The Court does not second guess the counsel's strategic decisions. Patterson quoting Churchman v. Dorsey, 1996-NMSC-033, ¶ 18, 122 N.M. 11, 919 P.2d 1076. Second, the prejudice prong is different for defendants who are convicted at trial than defendants whose convictions rest on pleas. A defendant at trial must prove that trial counsel's unreasonable performance calls into doubt "the reliability of the trial results." Patterson quoting Jacobs, at 127.

i. Meaningful Adversarial Testing.

In this case, Petitioner acknowledges he is required to prove both ineffectiveness of assistance of counsel by showing petitioner's counsel's performance fell below a reasonable competent attorney and showing how the counsel's ineffective performance resulted in prejudice against the petitioner. Since Petitioner was convicted at trial, he must also show how such prejudice resulted in a doubt that the trial results were reliable. However, Petitioner also claims that this is a case of egregious failure by trial counsel and, as a result, the Petitioner is relieved of the burden of proving prejudice. Petitioner argues egregiousness by claiming Petitioner's counsel failed to subject the prosecution's case to meaningful adversarial testing, by way relieving Petitioner to prove resulting prejudice.

The State disagrees. In State v. Dietrich, 2009-NMCA-031, ¶ 82, 145 N.M. 733, 753, 204 P.3d 748, 768, the court analyzed whether the defendant's counsel failed to subject the prosecution's case to meaningful adversarial testing when counsel did not move for a mistrial when it discovered the alleged victim would not be testifying. The court found that because the counsel attempted to impeach the alleged victim's statements brought out as hearsay through one of the State's witnesses, the counsel acted reasonably. The court stated, "counsel's attempt to impeach the alleged victim through a

witness and discover the tenor of the witness's investigation is exactly what defense counsel attempted to do, making that counsel an active participant in the defendant's trial." In addition, the counsel filed pretrial motions, filed a motion to suppress, and participated in hearings arising from his motions.

This case is similar to Dietrich. Petitioner alleges that his counsel was ineffective because he refused to call an expert witness to rebut Petitioner's competency. In 2008, Petitioner raised competency issues and on March 10, 2008, Petitioner was evaluated by Dr. Maxine Shwartz who rendered an opinion that Petitioner was incompetent. The court, ordered the Petitioner to be transported to the New Mexico Behavioral and Health Institute (NMBHI) in Las Vegas, NM, for treatment to attain competency pursuant to § 31-9-1.2 NMSA. On June 5, 2008, Petitioner was admitted to NMBHI, and on August 18, 2008, Dr. Joanne Burness who had evaluated Petitioner, rendered an opinion that Petitioner was competent to stand trial. During a Competency Hearing, Petitioner was deemed competent by the court. Dr. Burness testified during this Hearing. Dr. Shwartz did not.

Petitioner argues that because his counsel did not call Dr. Shwartz as a witness during the hearing and later at trial, that counsel should be deemed ineffective. Petitioner refers to Petitioner's Exhibit J as the "transcript from trial" dating October 9, 2013 where "Dr. Burness from NMBHI testified that she believed the Petitioner was malingering." It is important to clarify that while the Petitioner indicates that Dr. Burness testified to these statements at trial in October 2013, the record would reflect that Dr. Burness did not testify on October 9, 2013 at 2:41:40. In fact, Dr. Burness did not testify at all to the Petitioner's competency during the 2013 trial. The statements made in Petitioner's Exhibit J were made by the trial judge, the Honorable Teddy L. Hartley. This is only one of several errors in the transcript including referring to the trial judge as the Honorable Drew D. Tatum when the trial was presided over by the Honorable Teddy L. Hartley.

While Dr. Burness did not testify at the trial, the Doctor did testify during the Competency Hearing, on August 27, 2008, and stated that Petitioner was

malingering. The comments in Petitioner's Exhibit J are the trial courts comments regarding his recollection of that hearing.

Petitioner argues its counsel was ineffective because he failed to present Dr. Schwartz's testimony at trial presumable to argue that Petitioner was not malingering. However, at the time of trial, both parties had already stipulated that Petitioner was competent. (Stipulated on January 13, 2013 before the trial in October 2013) (Exhibit 1). The State argues that there would have been no reason, other than to confuse the jurors and delay proceedings, to bring Dr. Schwartz into testify to something, which was already stipulated. Petitioner had already been to Las Vegas, NM and had been treated to competency for trial. There had already been Competency Hearings to establish his competence before the trial took place and counsel for the Petitioner took part in those hearings. Most importantly, the testimony of Dr. Schwartz would be irrelevant at the time of trial. The trial took place October 7 through October 11, 2013. Dr. Schwartz met with the defendant on March 10, 2008. It had been five (5) years six (6) months and twenty seven (27) days between the time that Dr. Schwartz saw the defendant for her report and the trial. Her observations and opinions would have been stale and irrelevant at the time of trial.

In addition, it was clear from the record that in the event that the Petitioner choose to call Dr. Schwartz in the trial, the State would have called Dr. Burness as a rebuttal witness and it was very likely that her opinion that the defendant was malingering would have been admitted into evidence as well. (Exhibit 2) It was only after the State indicated that it intended to call rebuttal witnesses that the defense made the strategic decision not to call Dr. Schwartz. This was trial strategy that prevented the State from being able to call their expert in the trial. Like in Dietrich, the court should find that Petitioner's attorney reasonably acted to further court proceedings. There is no indication or any evidence that trial counsel failed to provide meaningful adversarial testing of the issues.

ii. Relevance and Strategic Decisions

Petitioner argues that since its counsel failed to provide Dr. Schwartz' testimony during the second competency hearing, such counsel's performance should be deemed ineffective. It is the State's contention that the testimony from Dr. Schwartz was irrelevant and the action of trial counsel to not call her for testimony was a strategic decision. After Petitioner's care at the NMBHI, where he was evaluated for more than 60 days by Dr. Burness who monitored his patterns and psychological state of mind, there would be little if any relevance to the evaluation of Dr. Schwartz that was performed before treatment. Dr. Schwartz's testimony would have been regarding five months prior to the most updated and current evaluation at that time. Upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding. The most up to date evaluation, then, would be most relevant and helpful for the court to render a decision that the Petitioner was competent and continue with court proceedings.

iii. Strategic Decisions by Counsel

Petitioner's trial council's decision not to present Schwartz as a witness to testify at the competency hearing was a strategic decision. A trial counsel may make decisions to move forward an argument, and not prolong proceeding with irrelevant, unhelpful information. Rule 11-401 NMSA tests relevance as having a tendency to make a fact more or less probable than it would be without evidence, and the fact is of consequence in determining the action. Calling a witness who has no relevant information would not assist the Court to make a decision. As stated in Patterson, the Court does not second guess the counsel's strategic decisions.

II. PETITIONER'S PRIOR ACTS INTRODUCED DURING TRIAL WERE RELEVANT AND RELATED TO THE STATE'S BURDEN OF PROVING MOTIVE AND/OR INTENT TO MURDER THE VICTIM

Petitioner was charged and convicted of murder in the first degree, pursuant to §30-2-1(A) NMSA. It is the State's burden to prove every element of the crime charged beyond a reasonable doubt. In this case Murder in the first degree required a showing that someone was killed by the defendant, without lawful justification or excuse by any kind of willful, deliberate and premeditated killing. To determine whether the evidence admitted during trial is related to the issues of the case, the State must relate the evidence to the motives and/or intent of the defendant. "Proof of motive sheds light on the likelihood of a defendant's guilty, and intent is an essential element of murder. Evidence that makes motive or intent more of less probable is therefore relevant." State v. Flores, 2010 NMSC 002, 226 P.3d 641. In Flores, the Court stated that although when viewing the evidence in that case in an isolated manner, it might not have concluded motive, when viewing all of the evidence in the totality of the case, the evidence could help the jury determine if the defendant was motivated to hurt or kill the victim. In this case, it is also necessary to view the evidence in light of all of the evidence in the case.

Intent is subjective and is almost always inferred from other facts in the case. Under Rule 11-404(B), evidence of a defendant's prior acts is admissible to show motive. Under Rule 11-403, evidence may be excluded only if its probative value is substantially outweighed by its prejudicial impact, the potential for confusion of issues, or the danger of misleading the jury. Determining whether the prejudicial impact of evidence outweighs its probative value is left to the sound discretion of the trial court. In State v. Rojo, 1999 NMSC 001, the Court ruled that when the evidence presented was found by the trial court to have probative value to assess a theory of motive for the murder committed, the trial court did not abuse their discretion in admitting the evidence.

In this instance, Petitioner argues that the prior acts of violence and rage he displayed toward the victim and Petitioner's mother leading up to the murder were not relevant. The State disagrees. First, it is important to note that the victim in this case, Eladio Pobledo, was residing with the Petitioner's mother. On multiple instances, Petitioner was violent toward the victim and threatened him, which

Petitioner admitted during the testimony at trial. The first act Petitioner argues was not relevant is the broken front window at the victim's home. Petitioner argues that the State could not prove that he broke the window. On October 10, 2013, 1:08:40 PM, Petitioner testified and admitted that he had broken out the window and did not know if his mother called the police on him for doing it. The second act Petitioner argues against being admitted was Petitioner breaking his mother's windshield with crutches. On October 10, 2013PM1:10:12 PM, Petitioner testified and admitted that he had broken out the window and did not know if his mother called the police on him for doing it. One act of violence toward the victim and Petitioner's mother may not point to direct motive, but several instances of violence is relevant to show motive and intent which is a question for the jury.

Lastly, the Petitioner argues that evidence brought in regarding Petitioner visiting a gun shop inquiring about buying a gun was not admissible to prove motive. The State disagrees. Facts that Petitioner searched for a gun at a gun shop was relevant and could have also been used to prove motive and/or intent to inflict serious injury or kill the victim. Less than 24 hours after Petitioner purchased bullets, Petitioner shot and killed the victim execution style in front of the victim's home. It is the determination of the fact finder to evaluate the facts surrounding the case, and determine if such facts conclude the Petitioner murdered the victim intentionally. Facts against the Petitioner may indeed be prejudicial, but until that prejudice substantially outweighs the probative value, they shall be admissible. Since each of these actions on the part of the defendant has probative value the trial court was correct to admit them.

- III. THE SHACKLED PETITIONER WAS NOT PREJUDICED WHEN HE FELL BECAUSE ALL PARTIES AGREED THAT THE JURY DID NOT SEE THE

RESTRAINTS AND THE COURT REMEDIED IT FROM BEING AN FUTURE ISSUE BY UNSHACKLING PETITIONER'S ANKLES AFTER THE FALL

The Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest to a particular trial, including security concerns. State v. Johnson, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 59, 229 P.3d 523, 532. Where a defendant is restrained in a manner not visible to the jury, prejudice is not presumed. Id. Generally, a prisoner coming into court for trial is entitled to make his appearance free of shackles or bonds. However, the defendant's right to appear free of visible restraints is not absolute. It must be balanced against the state's interest in maintaining security. Id. The jurors' inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial. In this case, if the jurors saw anything it would have been brief and inadvertent.

However, the evidence shows that in fact the jury never saw the shackles. A review of the record indicates that the Petitioner did fall around 3:06:11 P.M. on the first day of the trial, October 7, 2013. However, when Petitioner fell, all parties asserted that none of the jurors saw the Petitioner's legs shackled. Petitioner argues that the Court did not attempt to remedy the possibility that a juror may have seen Petitioner's shackles. However, the Court and the defense attorney were in the best position to factually know that no juror could have seen the shackles. Questioning the jurors would only have called more attention to what at most was an inadvertent moment. In addition, the Court then took action to ensure that there would not be even an opportunity for a second inadvertent episode. The Court ordered the shackles off of the Petitioner after the fall to avoid any prejudice against the Petitioner during the trial, even though all parties, including Defense, agreed that none of the jurors saw the shackled during the fall.

The Court has stated in State v. Johnson, 2010 NMSC 016, that shackling is prejudicial when the jury knows the defendant is shackled, and the prosecution failed to meet its burden of proving beyond a reasonable doubt that the inherently prejudicial shackling did not contribute to the guilty verdict. Johnson quoting Deck.

That situation is clearly distinguishable from the facts in this case. The jury in Petitioner's trial did not know that he was shackled and did not see his shackles during a fall. Also, the State met its burden of proving Petitioner murdered the victim execution style while he was lying on the ground, thus committing First Degree Murder. There is no way Petitioner could use the fact the jury saw him with shackles to negate all of the evidence and testimony, including his incriminating testimony, to prove that the convicted him because his ankles were shackled.

IV. THE STATE MET ITS BURDEN BY PROVING BEYOND A REASONABLE DOUBT THAT EVERY ELEMENT OF TAMPERING WITH EVIDENCE WAS ESTABLISHED TO CONVICT PETITIONER AT TRIAL

Petitioner argues that the State did not present evidence sufficient to support a finding of guilt beyond a reasonable doubt that Petitioner tampered with evidence. The State disagrees. During testimony, witnesses told the jury that they saw the Petitioner running from the home where he had shot the victim. The State called witnesses to testify that Petitioner ran through an alley near a store called RAGZ2RICHEZ. Investigators found the Petitioner's belongings in a trash bin in the alley. Petitioner also testified to throwing the gun used to murder the victim, as well as his other belongings into the trash can. This evidence supports the conviction for the first count of tampering.

To address the second count of tampering with evidence, the State called Deputy Sandy Loomis to testify at trial. Loomis conducted the investigation after the shooting and during the time Petitioner was in jail after his arrest for the murder. Loomis produced several recorded phone calls Petitioner's made while in the detention facility that clearly proved the Petitioner was tampering with evidence. After Petitioner was arrested, he made calls telling other people to go and collect a gun behind an alleyway. Petitioner made two phone calls on July 15, 2007, one at 18:30 and another at 18:38. On both calls Petitioner was heard telling his "tia" or aunt that "I threw a", "I bought a present, a toy" and then using Spanish saying he placed it behind RAGZ 2 RICHEZ, where you throw the trash. He also asked for Trompas, Tio, or Shorty to go get it. In the second call,

Petitioner requested a male to go get a “Bam Bam” located in the alley of RAGZ 2 RICHEZ.

RAGZ 2 RICHEZ is a store located at 506 West 7th Street. The alley of the store is the same in which Petitioner was seen by witnesses running North after the shooting. The firearm could not be located when investigators returned to locate the gun. On Day 4 of the trial, Petitioner testified to speaking with someone on the prison phone and requesting they go get the gun from the trash can outside of RAGZ 2 RICHEZ. Petitioner also admitted on the stand that he dumped his pants and the gun inside of the dumpster after he fled the scene where he had killed his step father. Petitioner stated the reason why he told someone to go get the gun because he thought that if the police could not locate the gun, he would get out of prison.

Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another. § 30-22-05 NMSA. After the Petitioner testified in trial, his testimony was paramount to the State meeting their burden beyond a reasonable doubt. It could not be clearer to the Court that the State met its burden in proving that the Petitioner committed two counts of tampering with evidence.

V. THE STATE DID NOT COMMIT PROSECUTORIAL MISCONDUCT BECAUSE THE STATEMENTS USED IN CLOSING WERE BASED ON EVIDENCE ADMITTED DURING TRIAL

Prosecutorial misconduct rises to the level of fundamental error when it is so egregious and had such a persuasive and prejudicial effect on the jury's verdict that the defendant was deprived of a fair trial. To find fundamental error, we must be convinced that the prosecutor's conduct created a reasonable probability that the error was a significant factor in the jury's deliberation in relation to the rest of the evidence before them. We will reverse a jury verdict only “(1) when guilt is so doubtful as to shock the conscience, or (2) when there has been an error in the process implicating the fundamental integrity of the judicial process. However, an isolated, minor impropriety

ordinarily is not sufficient to warrant reversal, because a fair trial is not necessarily a perfect one, State v. Allen, 2000 NMSC 002, ¶ 95,

In assessing whether prosecutorial misconduct has occurred based on statements made by a prosecutor at trial, reviewing courts are to evaluate a prosecutor's challenged statements "objectively in the context of the prosecutor's broader argument and the trial as a whole." State v. Sosa, 2009-NMSC-056, ¶ 26, 147 N.M. 351, 223 P.3d 348. Courts are to start their analysis from the long-accepted proposition that "during closing argument, both the prosecution and defense are permitted wide latitude, and the trial court has wide discretion in dealing with and controlling closing argument. State v. Smith, 2001-NMSC-004, ¶ 38, 130 N.M. 117, 19 P.3d 254. "Remarks by the prosecutor must be based upon the evidence or be in response to the defendant's argument." *Id.* Indeed, "statements having their basis in the evidence, together with reasonable inferences to be drawn wherefrom, are permissible and do not warrant reversal." State v. Herrera, 1972-NMCA-068, ¶ 8, 84 N.M. 46, 499 P.2d 364.

Petitioner argues that when the State's prosecutor called Petitioner a liar and later stated he was a menace to society, it was an egregious shock to the conscience of a reasonable person. The State disagrees. The statement that the Petitioner is a liar was proven through evidence at trial, including Petitioner's own statements made during his testimony. In one instance, the Petitioner stated, "my whole left side is disabled, I can barely walk." However, when the State mentions that he left the scene in less than 30 seconds after murdering the victim, Petitioner affirmed. A menace to society statement, taken as a whole according to the trial was also not egregious. Many witnesses testified to Petitioner having issues getting along with the victim, and Petitioner's mother. Petitioner also admitted during trial he violated a trespass order that forbid him to return to Petitioner's mother's home. Petitioner also admitted to telling various people while in jail to collect evidence after the murder. The statements that Petitioner is a liar and a menace are not egregious to shock the conscience of a reasonable person. Therefore we ask the Court to find the State did not commit prosecutorial misconduct during their closing argument.

VI. DISTRICT COURT FINDS THAT DOUBLE JEOPARDY IS NOT RAISED WHEN THE SAME OFFENSE IS CHARGED FOR TWO DIFFERENT INSTANCES.

If defendant commits two discrete acts volatile of same statutory offense, but separated by sufficient indicia of distinctiveness, double jeopardy clause does not preclude court from imposing separate, consecutive punishments for each offense. Swafford v. State, 112 N.M. 2 (1991-NMSC-043). The test is to determine whether the conduct for which there are multiple charges is unitary or distinguishable.

To determine whether two of the same statutory offense occurred, we must undertake a unit-of-prosecution analysis. For unit-of-prosecution challenges, the only basis for dismissal is proof that a suspect is charged with more counts of the same statutory crime than is statutorily authorized. The inquiry is to determine whether the legislature intended multiple punishments for one continuing act. The unit-of-prosecution analysis is done in two steps. First, we review the statutory language for guidance on the unit of prosecution. If the statutory language spells out the unit of prosecution, then we follow the language, and the unit-of-prosecution inquiry is complete. If the language is not clear, then we move to the second step, in which we determine whether a defendant's acts are separated by sufficient "indicia of distinctness" to justify multiple punishments under the same statute. In examining the indicia of distinctness, courts may inquire as to the interests protected by the criminal statute, since the ultimate goal is to determine whether the legislature intended multiple punishments. If the acts are not sufficiently distinct, then the rule of lenity mandates an interpretation that the legislature did not intend multiple punishments, and a defendant cannot be punished for multiple crimes. State v. Bernal, 2006-NMSC-050.

Petitioner argues that the State violated Double Jeopardy when charging him with two counts of Tampering with Evidence. The State opposes this argument. Petitioner does not acknowledge that when leaving the scene of the crime, Petitioner threw clothing and a gun into the trash can near RAGZ 2 RICHEZ. This crime was considered to be the first count of Tampering with Evidence. Then, after being arrested, Petitioner was heard on the prison phone line telling various family members and friends to return to the alleyway to retrieve the gun before the police located the evidence. This is considered another

count of Tampering with Evidence. When asked, during the trial, why he told individuals to retrieve the weapon, Petitioner stated, "I think [they] law enforcement would let me out." Court Transcript October 10, 2013 1:34:56 PM. It is evident in Petitioner's testimony during trial and the acts that Petitioner took immediately after the shooting, Petitioner should be charged with two counts of Tampering with Evidence.

CONCLUSION

The State respectfully requests this Court to affirm the district court's order dismissing the habeas corpus petition. The Petitioner has not raised any violations on the part of the State that would warrant a reversal of his conviction, or finding any error of the court that tried his case in 2013. It is for this reason and the reasons above, the State respectfully requests that the Court dismiss this petition and affirm the Petitioner's conviction.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Andrea Reeb", is written over a horizontal line.

ANDREA R. REEB

DISTRICT ATTORNEY

I hereby certify that I caused a true and correct copy of this response to opposing counsel on this 10th day of September, 2018.

Exhibit 1

0002/0002

EXHIBIT 3

2013 MAR -1 PM 3:54

Shelly B. Barger
CLERK OF DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

STIPULATED ORDER ON COMPETENCY

THIS MATTER having come before the Court, by way of stipulation of the parties, the State represented by Andrea R. Reeb, Chief Deputy District Attorney, and the defendant represented by his attorney, Jesse R. Cosby, Attorney at Law, and said parties having stipulated to the report dated 1-17-13, from Dr. Richard T. Fink, Ph.D; the parties agree that the Defendant is competent to stand trial in this matter;

IT IS HEREBY ORDERED that Defendant is competent to stand trial in this matter, and that a jury trial shall be scheduled.

Teddy L. Hartley
TEDDY L. HARTLEY
DISTRICT JUDGE, DIVISION III

Andrea R. Reeb
Andrea R. Reeb
Chief Deputy District Attorney

Jesse R. Cosby
Jesse R. Cosby
Attorney for Defense

D.A. No. 11-0539 MC/jwg

Exhibit 2

Description	ST. VS ALBERT RAMIREZ CR-07-434	FILED CURRY FILED
		2013 OCT 10 PM 4:45
	THE NINTH JUDICIAL DISTRICT COURT COUNTY OF CURRY STATE OF NEW MEXICO	
	CAUSE NO:D-0905-CR-2007-00434 JUDGE: TEDDY L. HARTLEY DATE: OCTOBER 10, 2013	
	STATE OF NEW MEXICO, Plaintiff / Petitioner,	
	vs.	
	ALBERT RAMIREZ, Defendant, Respondent,	
	TYPE OF PROCEEDING: MOTIONS ON DAY 4 OF JURY TRIAL ATTORNEY FOR PLAINTIFF: MATTHEW CHANDLER, JAROD MORRIS ATTORNEY FOR DEFENDANT: JESSE COSBY OTHERS PRESENT: COURT MONITOR: IRENE J. RODRIGUEZ	
	NOTICE: This log is not the official record. The official record is the audio cd. The log is created to assist in locating information on the cd. The log is not a verbatim record of the proceedings and could contain errors and omissions.	
Date	10/10/2013	Location CR1 CHAMBERS

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED , IT IS THE TIMELINE,
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THRE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE , I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR, FINK , IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING , AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
<u>10:58:56 AM</u>	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
<u>11:00:15 AM</u>	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
<u>11:01:15 AM</u>	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
<u>11:01:44 AM</u>	RECESS	
<u>3:44:06 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
<u>3:44:27 PM</u>	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
<u>3:45:47 PM</u>	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
<u>3:46:20 PM</u>	CHANDLER	WE HAVE CASELAW
<u>3:46:30 PM</u>	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
<u>3:46:46 PM</u>	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
<u>3:47:42 PM</u>	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
<u>3:48:58 PM</u>	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
<u>3:49:17 PM</u>	COURT	BASIS UPON
<u>3:49:34 PM</u>	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
<u>3:50:52 PM</u>		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
<u>3:51:10 PM</u>	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
<u>3:51:27 PM</u>	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
<u>3:52:06 PM</u>	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
<u>3:52:52 PM</u>	OFF RECORD	

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUMENT HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION, IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE, THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENT PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

10/10/2013

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
4:09:12 PM	CHANDLER	ONE OF THE DOCTOR'S SAYS HE IS MELINGERING
4:09:35 PM	COURT	GIVE ME 15 MINUTES
4:09:42 PM	RECESS	

**STATE OF NEW MEXICO
CURRY COUNTY
NINTH JUDICIAL DISTRICT COURT**

ALBERT RAMIREZ,

Petitioner,

v.

D-0905-CR-2007-00434

JAMES MULHERON, warden

Respondent.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Albert Ramirez, through his counsel Liane E. Kerr, and pursuant to NMRA Rule 5-802 and Article II, Sections 7, 12, 14, 15 and 18 of the New Mexico Constitution and the Fifth, Sixth and Fourteenth Amendments of the United States Constitution; and respectfully submits this Amended Petition for Writ of Habeas Corpus.

Mr. Ramirez respectfully requests that this Honorable Court issue a Writ of Habeas Corpus and vacate, set aside or correct Mr. Ramirez's sentence and order of confinement in D-905-CR-2007-0434 Mr. Ramirez contends that he was denied his state and federal constitutional right to due process and a fair trial because the cumulative effects prevented him from proving his innocence. The following amendments have been made to the pro se petitions filed on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

1. Place of Confinement: Mr Ramirez is detained by Warden James Mulheron at the Southern New Mexico Correctional Facility in Dona Ana, NM.

2. Nature of Proceedings Resulting in Confinement: Petitioner was found guilty following a change of plea on the date of his jury trial on January 26, 2009 of two counts of tampering

with evidence and first degree murder in the first degree. Petitioner moved to withdraw his plea and the court denied it; however, the Supreme Court remanded the matter, allowing Petitioner to withdraw his plea. Jury trial was ultimately held on October 10, 2013 and lasted four (4) days, after which Petitioner was found guilty of the murder and tampering charges.

3. Judgment and Sentence Resulting in Current Confinement. Petitioner was sentenced in the Ninth Judicial District Court, Honorable Teddy L. Hartley presiding, on January 8, 2014 to a consecutive sentence on each of the counts: a period of Life on the murder count plus six (6) years for each of the tampering counts in the New Mexico Department of Corrections.

4. Direct Appeal. On February 7, 2014, Petitioner appealed his original conviction to the Supreme Court of New Mexico in *State v. Ramirez*, S.Ct. No. 34,576 and a mandate affirming the trial court was issued on January 18, 2017.

5. Prior Petitions. Petitioner filed a Petition for Writ of Habeas Corpus on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

6. Habeas Representation/Timeliness of Petition: By Order of the Court, the Public Defender, Amanda Stephenson, entered an appearance on August 27, 2017. Ms. Stephenson filed two requests for extension, one on October 23, 2017 and again on January 19, 2018, making the Petition due on or before April 19, 2018. Due to a conflict, the Public Defender's Office recently reassigned the Petitioner's case to Liane E. Kerr, who requested a sixty day extension in order to fully review the case, meet with her client and file the brief. The request was opposed by the State. Consequently, this Petition is filed without fully meeting with Mr. Ramirez.

7. **Relief Requested:** This petition seeks to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.

ISSUES PRESENTED IN THIS PETITION:

- a. Whether Petitioner was denied his sixth amendment right to effective assistance of counsel and compulsory process when his attorney refused to call Dr Maxann Shwartz to testify at either the competency hearing or at trial?
- b. Whether Petitioner's criminal convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404b?
- c. Whether Petitioner was denied his right to due process when jurors observed him shackled during trial?

STATEMENT OF FACTS/PROCEDURAL HISTORY

A. Procedural History.

Petitioner was indicted on July 20, 2007 and charged with first degree murder and two counts of tampering with evidence. [Exhibit A] On January 26, 2009, the first day of his jury trial, Mr. Ramirez pled guilty to two counts of tampering with evidence and first degree murder in the first degree, with tampering counts running concurrent to the life sentence.

Mr. Ramirez moved to withdraw his plea on February 25, 2009, a motion the trial court heard on June 25, 2009, but denied on July 29, 2009. Following an appeal of the denial to withdraw plea, the New Mexico Supreme Court reversed the denial on July 6, 2011 and remanded for a trial on the merits which was ultimately held on October 7-11, 2013 where jurors were instructed to find first degree murder and Petitioner was found guilty of first degree murder. [Exhibit B]. Although Petitioner's plea exposed him to a life sentence only, following trial, Petitioner was sentenced to the

life sentence and each tampering count consecutively, earning him an additional six years for a term of life plus six years. [Exhibit C].

1) Facts Regarding Introduction of Prior Bad Acts Evidence

During trial, the State introduced three incidents of bad acts evidence, which Mr. Ramirez maintains was error. Over objection, the State introduced evidence that Mr. Ramirez broke his mother's windshield. [Exhibit D: Transcript, 10/8/13, 4:03:49-4:08:21]. Again over objection, the State introduced evidence that the victim's home had been burglarized with the implication that it was Mr. Ramirez who made the entry. [Exhibit E: Transcript, 10/8/13, 4:14:04; 10/11/13, 8:5526-8:59:31] A final bad acts reference was introduced when the State called a firearms dealer, who testified that Mr. Ramirez sought to purchase a firearm from him. [Exhibit F: Transcript, 10/8/13, 4:15:55-4:25:21].

2) Facts in Support of Prejudice from Shackles Observation

During a break, as jurors were leaving the courtroom, Mr. Ramirez tripped as a result of wearing shackles. He maintained that jurors observed him fall and saw his shackles as a result. [Exhibit G: Transcript, 10/7/13, 3:10:07-3:11:12].

3) Facts Regarding Petitioner's Competency

A notice to determine competency was filed on January 14, 2008 [Exhibit H] and the defendant was evaluated by Dr. Maxann Schwartz and determined incompetent. [Exhibit I]¹. On January 17, 2008, the Defendant was committed to the New Mexico Behavioral Health Institute at

¹ Although confidential, Mr. Ramirez disclosed Dr. Schwartz' report and provided a copy attached to his pro se Petition for Habeas relief and therefore, any concerns about confidentiality are waived.

Las Vegas (NMBHI) for a period of three months. **[Exhibit J]**. A hearing was held on September 15, 2008, where Dr. Burness from NMBHI testified that she believed the Petitioner was malingering. **[Exhibit K, L]** By Order of the Court, Petitioner was deemed competent to stand trial on September 16, 2008. **[Exhibit M]** The record does not reflect that Dr. Shwartz was called to rebut the testimony of Dr. Joanne Burness at the final hearing regarding competency. The State then identified Dr. Burness on its witness list and the Defense filed a Motion in Limine to address statements made to Dr. Burness. **[Exhibit N]**.

Following the remand by the Supreme Court on the plea withdrawal issue, another Motion for Mental Evaluation was filed on September 22, 2011 **[Exhibit O]**; an Order was entered and Petitioner was again sent to NMBHI for an evaluation **[Exhibit P]**. In the interim, further forensic evaluation at NMBHI was ordered by the Court **[Exhibit Q]**. Subsequently, Mr. Ramirez was deemed competent to stand trial on March 1, 2013. **[Exhibit R]**

During trial, the issue of Mr. Ramirez' competency arose repeatedly. During voir dire, the defense attorney informed jurors that there were matters concerning Mr. Ramirez' mental health. **[Exhibit S, Transcript: 10/7/13, 12:05]**. The Court noted that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. **[Exhibit T, Transcript: 10/8/13, CD B 8:42:10-8:43:50]**. Mid-trial, Mr. Ramirez issued a rambling statement about his health and said that he heard voices and was concerned his attorney was mad at him. **[Exhibit U, Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58]**. Also mid-trial, the Defense reminded the Court of competency issues and alerted the Court that Mr. Ramirez did not understand the proceedings and was incapable of assisting in his defense. **[Exhibit V, Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49]**. In response, the Court; however,

opined that Mr. Ramirez was malingering but noted he had never seen a defendant act the way Mr. Ramirez was acting. [Exhibit W, Transcript: 10/9/13, 10:18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20]. The Defense again asked for a review of competency. [Exhibit X, Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46]. Mr. Ramirez specifically asked that the jury be told about his medical problems and specifically told the Court that he did not believe the trial to be fair, as the right questions were not being asked and Dr. Schwartz' testimony was necessary to him having a fair trial. [Exhibit Y, Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15] Throughout, the Defense alerted the Court that Mr. Ramirez was difficult to represent. [Exhibit Z, Transcript: 10/10/13, CD B 2:06:30-2:41:36]. The Defense; however, informed the Court and the State that it would not be submitting a competency instruction. [Exhibit AA, Transcript: 10/10/13, 4:32:27-4:35:41].

B. Facts of the Case.

Petitioner, eighteen year old Albert Ramirez, sometimes resided with his mother, Debra Ramirez and step-father, Elado Robledo at their home in Clovis, New Mexico. Some of his belongings remained at the residence when he was ordered to leave the home due to a disruption with his step-father. When Albert Ramirez returned to the home to collect some of his belongings on July 12, 2007, he argued with his step-father and shot and killed Elado Robledo. This was witnessed by neighbor Sam Saiz, Jr. and another person who was driving by at the time.

During the investigation, law enforcement located Petitioner's shoe, a pair of shorts and some clothing in a trash dumpster several blocks from the scene. Although no firearm was located, jail calls were intercepted where Petitioner directed his cousin to an area to remove a "ban ban", something Petitioner admitted was a gun that he used in self-defense during the shooting

The State introduced prior bad acts during trial. Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield

During his testimony, the Petitioner claimed self-defense and told jurors that the shoe and shorts were a result of his step-father's assault. He said that his step-father had a gun and he had something in his hands, causing the Petitioner to fear for his safety. During cross-examination, Petitioner refused to respond to the prosecutor's questions, electing instead to chastise his defense counsel

During a break, the Petitioner tripped over a table due to the shackles on his ankles. He complained of prejudice because jurors were present in the courtroom. The trial court held that jurors could not see the shackles, as a skirt covered the trial table. None of the jurors was questioned regarding the incident and what he/she saw, nor did trial counsel request a mistrial.

ARGUMENT

Petitioner, Albert Ramirez, adequately alleges claims, which entitle him to legal argument and/or an evidentiary hearing on the following grounds: Denial of his sixth amendment right to effective assistance of counsel and denial of his due process right to a representative venire panel.

- I. PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT OF COMPULSORY PROCESS WHEN HIS ATTORNEY FAILED TO CALL DR. MAXANN SHWARTZ TO REBUT THE STATE'S MERE ASSERTIONS OF MALINGERING AND TO TESTIFY AT TRIAL ABOUT THE DEFENDANT'S STATE OF MIND.**

A. It is Ineffective Assistance of Counsel to Ignore a Defendant's Right of Compulsory Process.

The Sixth Amendment's right to counsel guarantee requires that effective assistance of counsel be given at all stages of the proceedings, and New Mexico has affirmed this right. U.S. Const. amends VI and XIV; N.M. Const. Art. II § 14; *State v. Robinson*, 99 N.M. 674, 662 P.2d 1341 (1983). Defense counsel's performance is measured against "an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984), *State v. Orona*, 97 N.M. 232, 638 P.2d 1077 (1982); *State v. Dean*, 105 N.M. 5, 727 P.2d 944 (Ct. App. 1986) (standard is whether defense counsel exercised the skill, judgment, and diligence of a reasonably competent attorney).

As noted by *Strickland v. Washington*, "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction...has two components:

- 1) First, the defendant must show that counsel's performance was deficient...
- 2) Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687.

In order to prevail on an ineffective assistance claim, the defendant must show her counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced. *State v. Talley*, 103 N.M. 33, 34, 702 P.2d 353, 354 (Ct. App. 1985). Prejudice is measured by "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland v. Washington*, 466 U.S. 668, 695, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984). The test for judging any claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104

S. Ct. at 2064. In reviewing an ineffectiveness claim, the entire proceedings must be considered as a whole. *Id.*, *State v Talley*, *State v Lovato*, 110 N.M. 146, 147, 793 P.2d 276, 277 (Ct. App. 1990).

In cases of egregious failure by trial counsel, defendants are relieved of the burden of establishing prejudice due to “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” *United States v Cronin*, 466 U.S. 648, 659 (1984). The *Cronin* court described three such circumstances:

- (1) denial of counsel altogether;
- (2) defense counsel’s failure “to subject the prosecution’s case to meaningful adversarial testing”; and
- (3) when the accused is “denied the right of effective cross-examination.” *Id.*

This is such a case. Counsel failed to subject the prosecution’s case to meaningful adversarial testing. *State v Aragon*, 2009-NMCA-102, ¶ 15, 147 N.M. 26, 216 P.3d 276 (prima facie demonstration of ineffective assistance where trial counsel failed to secure an expert necessary to explain the State’s evidence).

B. Trial Counsel Erred in Failing to Call Dr. Maxann Schwartz as a Witness to Rebut the State’s Mere Assertions of Malingering and Denied Mr. Ramirez his Rights to Compulsory Process and Fair Trial when he Refused to Call Dr. Schwartz to Testify Regarding Mr. Ramirez’ Mens Rea.

Mr. Ramirez was evaluated by an accredited psychologist, Dr. Maxann Schwartz, who found him incompetent to stand trial and who did not find malingering. Dr. Schwartz was not called at the final hearing to determine competency to testify about Mr. Ramirez’ present competency and against the state’s assertion of mere malingering. As a result, the Court could only consider the findings of Dr. Burness, from NMBHI, who testified that she believed Mr. Ramirez was pretending not to understand. The Court relied on this testimony to adjudge Mr. Ramirez competent to stand trial

Although Mr. Ramirez requested that his attorney call Dr. Schwartz as a witness at trial to address his state of mind, his counsel refused to do so. This failure to call Dr. Schwartz to testify as to competency at the time of the event resulted in a denial of Mr. Ramirez' right of compulsory process. Criminal defendants have the right to put before a jury evidence that might influence the determination of guilt.¹ *Taylor v Illinois*, 108 S. Ct. 646 (1988) citing *Pennsylvania v Ritchie*, 480 U.S. 39, 56 (1987)(criminal defendant's conviction reversed and remanded because he was not allowed to examine government documents that may have affected the outcome of the trial)).

The right to present a defense is "as American as apple pie". Defendants are constitutionally entitled to be heard, effectively present evidence central to their defense, call-witnesses to testify on their behalf, and rebut evidence presented by the prosecution. It is well established that the Sixth Amendment guarantees the right of Confrontation. As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to call witnesses to testify on their own behalf and if necessary, to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. *See* N.M. Const., Art. II, Sec. 14 ("[i]n all criminal prosecutions, the accused shall have the right . . . to have compulsory process to compel the attendance of necessary witnesses in his behalf . . ."); U.S. Const. amend. VI ("[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . ."). Without this right, Defendant asserts, his broader right to a fair trial, guaranteed by the Fourteenth Amendment to the United States Constitution and by Article II, Section 18 of the New Mexico Constitution, was imperiled. *See generally* Peter Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71, 166-70 (1974).

Few rights are more fundamental than that of an accused to present his own defense" *Taylor v Illinois*, 108 S. Ct. 646 (1988); *Chambers v Mississippi*, 410 U.S. 284, 302 (1973)). Our United States Supreme Court has held that the right to present a defense consisted of the right to compel the attendance of witnesses and offer their testimony and that such a right "stands on no lesser footing than other Sixth Amendment rights that we have previously held applicable to the states.'" *Taylor v Illinois*, 108 S. Ct. at 652-653 (quoting *Washington v Texas*, 388 U.S. 14, 18 (1967)). Such a right "is an essential attribute of the adversary system itself" 46 *Id.* (citing *United States v. Nixon*, 418 U.S. 683 (1974)(President's duty violated his constitutional right "to have compulsory process to compel the attendance of necessary witnesses in his behalf"). See also N.M. Const., Art. II, § 14; see *State v Cooley*, 19 N.M. 91, 140 P. 1111, 52 L.R.A., N.S., 230 (1914).

Mr. Ramirez was charged with first degree murder—a charge that on its face requires a showing that his actions were willful and deliberate and which requires a showing of premeditation. [Exhibit B], See *State v Montoya*, 1963, 72 N M. 178, 381 P.2d 963; *State v Ybarra*, 1918, 24 N M. 413, 174 P 212 (essential elements of murder in the first degree include the elements of deliberation and premeditation). "An abnormal mental condition may influence the probability that a defendant premeditated and deliberated-and so be taken into account by a jury in determining whether those states of mind existed in fact (beyond a reasonable doubt)-even though it did not eliminate the capacity for premeditation." *United States v Peterson*, 509 F.2d 408, 416-17 (D.C Cir. 1974). "[E]xpert testimony is admissible if it merely 'support[s] an inference or conclusion that the defendant did or did not have the requisite mens rea.'" *United States v Bennett*, 161 F.3d 171, 183 (3rd Cir. 1998) (quoting *United States v Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997)). Dr. Shwartz' testimony was relevant, we note that New Mexico courts have long allowed such expert testimony

relating to a defendant's mental state at the time of the commission of the offense. *See id.*; *see also State v. Elliot*, 96 N.M. 798, 635 P.2d 1001 (Ct. App. 1981); *State v. Smith*, 80 N.M. 126, 452 P.2d 195 (Ct. App. 1969). Regardless, Dr. Shwartz was not called at trial to testify about Mr. Ramirez' present competency and against the state's assertion of mere malingering. *State v. Balderama*, 88 P.3d 845, 135 N.M. 329 (2004).

Counsel's failure to pursue a potentially meritorious defense raises substantial questions of ineffective assistance counsel. *See State v. Luna*, 1979-NMCA-048, ¶27, 92 N.M. 680 (Court addressed issues relating to ineffective assistance of counsel for failure to file pre-trial motions regarding charge of conspiracy when 3 other co-defendants had that particular charge dismissed, leaving no one to conspire with). "The testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies...counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986)(internal citations omitted); *see also Strickland*, 466 U.S. at 687-88.

Reasonable professional performance includes a duty to investigate all reasonable lines of defense. *Fisher v. Gibson*, 282 F.3d 1283, 1291 (10th Cir. 2002), *citing Strickland*, 466 U.S. at 691. The failure to pursue information from a key witness regarding the basis of the accused's most important defense cannot be considered sound trial strategy. *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994). Counsel is ineffective if he fails to conduct an adequate investigation into the defendant's most viable theory of the defense. *Bigelow v. Williams*, 367 F.3d 562 (6th Cir. 2004) (reasonable prudence should lead lawyer to recognize the importance of potential witness testimony).

The failure to pursue an adequate defense may establish grounds for finding ineffective assistance of counsel. *State v. Barnett*, 1998-NMCA-105, ¶ 30, 125 N.M. 739 citing ABA Standards for Criminal Justice Pleas of Guilty, Standard 14-3.2 (2nd edition 1980)

Whether defense counsel's actions were unreasonable or caused prejudice cannot be established by the trial record; *State v. Plouse*, 2003-NMCA-048, ¶ 15, 133 N.M. 495, 64 P.3d 522; rather, a habeas proceeding is the appropriate procedure, so that "the defendant may actually develop the record with respect to defense counsel's actions." *State v. Arrendondo*, 2012-NMSC-013, ¶ 38. New Mexico appellate courts frequently remand claims of ineffective assistance of counsel brought on direct appeal for further evidentiary hearings. *State v. Hunter*, 2006-NMSC-043, ¶30, 140 N.M. 406, 143 P.3d 168. "[H]abeas corpus proceedings are the preferred avenue for adjudicating ineffective assistance of counsel claims, because the record before the trial court may not adequately document the sort of evidence essential to a determination of trial counsel's effectiveness." *Id.* (internal quotation marks and citation omitted). Thus, we have held that an evidentiary hearing in most cases "may be necessary." *Id.* (internal quotation marks and citation omitted).

Defendant's ability to confront his accuser and to obtain compulsory process, protected by the Sixth Amendment to the United States Constitution as well as Article II, Section 14 of the New Mexico Constitution, was compromised. As a result, Mr. Ramirez was denied his right of due process contrary to N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 and compulsory process as guaranteed by N.M. Const, Art. II, Sec. 14 and U.S. Const. Amend. VI.

"A defendant is not entitled to an attorney who will 'leave not the smallest stone unturned'

..but when the defendant has but one stone, it should at least be nudged.” *Coleman v. Brown*, 802 F.2d 1227, 1234 (10th Cir. 1986)(internal citations omitted). Mr. Ramirez submits that failure to call Dr. Shwartz as a witness, per his request, was tantamount to ignoring a boulder.

II. PRIOR BAD ACTS SHOULD NOT HAVE BEEN INTRODUCED AND THEIR INTRODUCTION DENIED THE PETITIONER HIS RIGHT TO A FAIR TRIAL.

A Defendant is presumed innocent and is entitled to due process and a fair trial. U.S. Const., amend V., XIV; N.M. Const., art. II § 18.” *State v. Martin*, 1984-NMSC-077, ¶ 17, 101 N.M. 595 (fair trial); U.S. Const., amends VI and VII, and N.M. Const., Art. II, sec. 14 and 18 (presumption of innocence); and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

The evidence was not relevant. It is the state's burden to establish the relevancy of the proffered evidence *State v. Herrera*, 92 N.M. 7, 582 P.2d 384 (Ct. App.), *cert. denied*, 91 N.M. 751, 580 P.2d 972 (1978). Rule 404(B) is a specialized rule of relevancy which requires counsel to identify the consequential fact to which the proffered evidence of other acts is directed. *State v. Aguayo*, 114 N.M. 124, 835 P.2d 840 (Ct. App), *cert denied*, 113 N.M. 744, 832 P.2d 1223 (1992). It is only then, after the proponent has provided the trial court with an adequate basis, that the trial court should decide whether the probative value of the evidence is not substantially outweighed by the prejudicial impact. *State v. Beachum*, 96 N.M. 566, 568-69, 632 P.2d 1204, 1206-07 (Ct. App. 1981)(emphasis added). Such evidence should not be received when “very probably its sole result, or at least its overwhelming result, will be that of establishing defendant's bad character, or his disposition or propensity to commit crime, as the basis for an inference that he committed the crime

with which he is charged and for which he is being tried." *State v. Mason*, 79 N.M. 663, 667, 448 P.2d 175, 179 (Ct. App.), *cert denied*, 79 N.M. 688, 448 P.2d 489 (1968).

As noted by the Court of Appeals in *State v. Andrade*, 1998-NMCA-031, ¶12

[o]ur rules of evidence, following longstanding legal tradition, insist that a defendant not be convicted by a jury simply on evidence that the defendant is a bad person." *citing* Rule 11-404 NMRA....[e]vidence of a defendant's prior misconduct ordinarily is not admissible to support the inference that the defendant has a propensity to commit unlawful acts and therefore is likely to have committed the charged act. New Mexico has been particularly strict in limiting evidence of prior crimes." *citing State v. Wright*, 1996-NMCA-077.

Although evidence of other bad acts may be relevant, the risk that the jury will convict because Defendant is a bad person and needs to be punished creates a prejudicial effect. Rule 11-404 (b) provides that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith or to show criminal propensity. *See State v. Roybal*, 115 N.M. 27, 846 P.2d 333 (Ct. App. 1992)("Generally, proof of other crimes has a tendency to prejudice the minds of the trier of facts and predispose them to a belief in the accused's guilt.").

Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield. The State presumably sought protection under Rule 11-404 (b) as indicated below.

The broken front window was never proven to be the Defendant. Incredibly, the State sought introduction of this act to show motive. The evidence was not relevant to defendant's motive to

commit the instant offense, as the State could not prove that it was the Defendant who broke the window and not just a random act. *See e.g. State v. Ruiz*, 119 N.M. 515, 892 P.2d 962 (Ct. App. 1995); *State v. Williams*, 117 N.M. 551, 874 P.2d 12 (1994)(prior relationship with victim or merely enjoying sex is not sufficient to suggest that a defendant had cause to force himself on the victim). Admission of prior acts must be shown to sufficiently be similar to the charged acts to indicate they were likely done by the same person. In order for evidence to be admissible under this exception, the similarity must rise above the level of characteristics common to many incidents of the crime and must indicate a distinct pattern of conduct. The incident was not so distinctive as to constitute a "unique or distinct pattern easily attributable to one person." *State v. Beachum*, 96 N.M. 566, 568, 632 P.2d 1204, 1206 (Ct. App. 1981).

The firearms expert could not recall what kind of weapon Mr. Ramirez allegedly sought to purchase; he could not recall when exactly Mr. Ramirez came to his business; he did not keep a copy of the firearms application form which he claims he received from Mr. Ramirez. Although trial counsel sought to exclude the evidence, the trial court allowed the State to introduce it to support motive and premeditation. This was in violation of Rule 11-404(B) which provides that evidence of a defendant's prior acts is admissible to show proof of motive. Factually similar incidents cannot, alone, prove plan, particularly when the acts are several years apart and the State must be able to prove the act was somehow part of a bigger plan. *State v. Montoya*, 116 N.M. 72, 860 P.2d 202 (Ct. App. 1993).

Finally, whether Mr. Ramirez did or did not break his mother's windshield, the evidence was neither relevant nor probative to prove that Mr. Ramirez intended harm to his step-father. The evidence was admitted in violation of Rule 11-404(A) NMRA 2004 (providing that "[e]vidence of

a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). *See State v Lucero*, 114 N.M. 489, 492, 840 P.2d 1255, 1258 (Ct. App. 1992); *see also State v Alberts*, 80 N.M. 472, 474, 457 P.2d 991, 993 (Ct. App. 1969) (finding that if the sole purpose of evidence is to demonstrate bad character, reputation, or disposition, its prejudicial effect makes it inadmissible).

On the whole, the probative value of the evidence did not outweigh the prejudicial effect for which the State introduced it. As noted in *State v Williams supra*, "[i]f evidence of prior acts is relevant and admissible for a purpose other than proving a defendant's propensity to commit a crime, the probative value of the evidence must outweigh its prejudicial effect". *Id citing State v Landers*, 115 N.M. 514, 517, 853 P.3d 1270, 1273 (1993); NMRA 1999, 11-403; *State v Beachum*, 96 N.M. 566, 567-68, 632 P.2d 1204, 1205-06 (Ct. App. 1981).

Even when admitting prior bad acts evidence under a recognized exception, the trial court must still meet the requisites of 11-403. *State v Wrighter*, 122 N.M. 200, 922 P.2d 582 (Ct. App. 1996). The trial court may admit evidence under NMRA 1999, Rule 11-404(B) if the probative value of the evidence outweighs any prejudicial effect. *State v Landers*, 115 N.M. at 518, 853 P.3d at 1274.

There is no indication that the Court balanced the prejudicial effect of the evidence against its probative value to determine if "the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. *See* Rule 11-403, NMRA 2001. Even allowing that evidence of the defendant's prior history was admissible to establish context, *See Jones*, the trial court must engage in a balancing requirement of NMRA 1999, 11-403.

State v. Roja, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829 ("Under Rule 11-403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."

Proof of other crimes has a tendency to prejudice the minds of the triers of fact and to predispose them to a belief in the accused's guilt. See *State v. Rowell*, 77 N.M. 124, 419 P.2d 966 (1966); *State v. Allen*, 91 N.M. 759, 581 P.2d 22 (Ct. App. 1978).

The real danger of admitting past conduct is that, if the jury believed the testimony, the jury would conclude that the Defendant acted in conformance therewith, and if he did so then, it is more likely he did so now. One cannot ignore the long tradition of courts and commentators expressing fear that jurors are too likely to give undue weight to evidence of a defendant's prior misconduct and perhaps even to convict the defendant solely because of a belief that the defendant is a bad person.

State v. Lamure, 115 N.M. 61, 71, 846 P.2d 1070, 1080 (Ct. App. 1992), *cert. denied*, 114 N.M. 720, 845 P.2d 814 (1993). Rule 404(B) is designed to prevent this kind of perception. *Id.* Testimony which amounts to evidence of a defendant's bad character, or disposition to commit the crime charged, when not offered for a legitimate purpose, is inadmissible and unfairly prejudicial. *State v. Rael*, 117 N.M. 539, 540, 873 P.2d 284, 286 (Ct. App. 1994).

Defendant submits that it was prejudicial error to admit evidence of prior uncharged conduct, *State v. Ross*, 88 N.M. 1, 536 P.2d 265 (Ct. App. 1975). Any references to other offenses may be probative, but its probative value is substantially outweighed by the prejudice to the Defendant. *State v. Hogervorst*, 90 N.M. 580, 566 P.2d 828 (Ct. App. 1977). Accordingly, Defendant's rights to fair trial and due process were violated. U.S. Const., amend V., XIV; N.M. Const., art. II § 18 (fair trial) and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

III. THE PETITIONER WAS LIKELY PREJUDICED AND DENIED HIS RIGHT TO A FAIR TRIAL WHEN HIS FALL WAS A DIRECT RESULT OF BEING SHACKLED AND HIS ATTORNEY DID NOT SEEK TO HAVE JURORS POLLED REGARDING WHETHER THEY SAW THE SHACKLES OR NOT.

A person in custody “coming into court for trial is entitled to make his appearance free of shackles or bonds.” *State v Holly*, 2009-NMSC-004, ¶ 41, 145 N.M. 513, 201 P.3d 844 (internal quotation marks and citation omitted); *see also* Rule 5-115(C) NMRA (“Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains or stun belts, a visible bullet proof vest or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury.”). The record does not reflect that any order was issued by the trial court, until after the fall, whereby the shackles were removed for the remainder of the trial.

Petitioner recognizes that “a defendant's right to appear free of visible restraints is not absolute”, *State v Johnson*, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 229 P.3d 523, as “it must be balanced against the state's interest in maintaining security.” *State v Gomez*, 1971-NMCA-009, ¶¶ 2-7, 82 N.M. 333, 481 P.2d 412 (upholding the district court's denial of mistrial where jurors had viewed the defendant in handcuffs only as safety requirements demanded, “prior to the beginning of trial and during recess”). In this case; however, there were other adequate remedies to ensure the safety of the community and the integrity of security.

While a juror's “inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial,” *See Holly*, 2009-NMSC-004, ¶ 41, in this case, there may have been 12 jurors who observed Mr. Ramirez in shackles. In *Holly*, a single juror may have seen the defendant in handcuffs during his escort back to detention. *Id.* ¶ 40. Rather than calling

attention to the incident by questioning the jurors, the district court chose to remedy the situation by repeating the general jury instructions to the jurors. *Id.* On appeal, our appellate court concluded that the incident did not constitute fundamental error because "it [was] unclear whether any exposure actually occurred, or if it did, that it was anything more than inadvertent or insignificant exposure." *Id.* ¶ 42. Here, there is nothing indicating that the Defense sought to question jurors regarding what they did/did not see when the defendant fell, rather, an assertion was made and the parties determined that likely none of the jurors saw anything. Another difference is that the defendant in Holly was wearing handcuffs. Shackles are arguably more egregious.

Given the uncertainty, the Defense should have demanded the jurors each be questioned individually and should have moved for a mistrial. In *State v. Mills*, 1980-NMCA-005, ¶ 15, 94 N.M. 17, 606 P.2d 1111, at least one juror viewed the defendant in handcuffs while a bailiff was escorting the defendant from the courtroom during a noon recess. The defendant moved for a mistrial, arguing that the incident deprived him of a fair trial. *Id.* The bailiff explained to the district court that he had waited with the defendant "for the time normally required for the departure of jurors," and "that the view occurred because some jurors had used the restroom before departing." *Id.* ¶ 16. The district court held that the juror's observation of defendant in handcuffs was inadvertent and denied the defendant's motion for a mistrial, reasoning that "any impropriety resulting from the view was harmless" because the evidence at trial showed that the defendant was incarcerated. *Id.* ¶¶ 16-17. This case differs in three respects: the observation may have been made by all of the jurors; the defendant in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



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VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

I, the undersigned, being first duly sworn upon my oath, state that I am the Petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained therein are true and correct to the best of my knowledge, information, and belief.



Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2018,
by _____.



NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the Respondent and the district attorney in the county in which the petition is filed by _____ (described manner of service), this 19th day of May, 2018



LIANE E. KERR, Esq.

in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

IV. MR. RAMIREZ ADDITIONALLY REQUESTS THE COURT CONSIDER ADDITIONAL ISSUES WHICH WERE INHERENT IN HIS TRIAL, BUT WHICH WERE NOT RAISED BY HIS APPELLATE ATTORNEY.

Undersigned provided Mr. Ramirez with a copy of the Petition and asked that he contact her with any suggestions/changes. No contact was made; however, in meeting with Mr. Ramirez, he made requests for additional arguments and they are therefore addressed briefly. See *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985). (counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit). Mr. Ramirez asks this Court to consider the following in the context of the entire trial:

1. **Sufficiency of the Evidence.** If the State does present evidence sufficient to support a finding of guilt beyond a reasonable doubt, the verdict violates the Due Process Clause. See *Jackson v. Virginia*, 443 U.S. 307, 317–18 (1979). Proof beyond a reasonable doubt is equivalent to proof "to a moral certainty," and refers to the highest degree of confidence with which an historical or physical fact can be known. *Victor v. Nebraska*, 511 U.S. 1, 11-12 (1994). See also *State v. Silva*, 2008-NMSC-051, ¶¶ 19-20, 144 N.M. 815, 192 P.3d 1192 (prosecution failed to present "any evidence, circumstantial or otherwise, of an overt act" by the defendant from which the jury could infer an intent to defendant), and *State v. Duran*, 2006-NMSC-035, ¶¶ 15-16, 140 N.M. 94, 140 P.3d

515.. 2008-NMSC-051, ¶ 19 (no evidence of any act by the defendant to destroy or hide evidence, with the only support for the tampering charge stemming from the fact that the evidence was not found).

2. **Prosecutorial Misconduct.** Without objection from trial counsel, the prosecutor claimed that Mr. Ramirez was a “menace to society”, a liar and during his closing argument. Prosecutorial misconduct reaches the level of fundamental error when it is egregious and so pervasive and prejudicial that the defendant was deprived of a fair trial and applies only when a defendant's conviction would shock the conscience if allowed to stand, or when an error is such that the fundamental integrity of the judicial process is implicated. *State v. Sosa*, 2009-NMSC-056, ¶ 35, 147 N.M. 351, 223 P.3d 348. Mr. Ramirez maintains that his conviction, when viewed against the prosecutor's comments and conduct, would shock the conscience if allowed to stand.

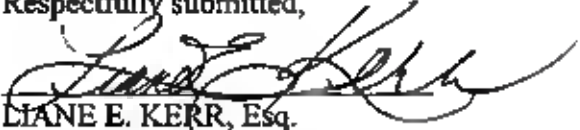
3. **Double jeopardy.** Mr. Ramirez believes that being twice charged with evidence tampering was tantamount to double jeopardy. No person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Imposing multiple punishments for tampering charges directed at the same item of evidence, violates the right to be free from double jeopardy. *State v. DeGraff*, 2006-NMSC-011, ¶ 34, 139 N.M. 211, 131 P.3d 61. However, Undersigned recognizes that distinct acts, separated by time and space, do not violate double jeopardy. *See State v. Quick*, 2009-NMSC-015, ¶ 25 (stating that “[d]istinctness may be established by determining whether the acts constituting the two offenses [were] . . . separated by time or space”).

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless

it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶ 3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶ 6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



LIANE E. KERR, Esq.

PO Box 10491

Albuquerque, NM 87184-0491

(505) 848-9190

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez:

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.

Because of the late receipt of discovery, I requested a 60 day extension (since Ms. Stephenson requested two separate 90 day extensions but filed nothing, I didn't want to push things and ask for a full 90 days). Unfortunately, the State would not agree to my request. The judge gave us only 30 days, making our new Petition due May 19, 2018.

I have been working furiously to pull the Petition together so we will not miss the deadline. I sent the audio CDs to a transcriptionist to transcribe only those portions of the trial which support the habeas argument. I made reference to the transcripts by citing to the CD and counter number. Once I have the transcripts, I will replace the CD counter number with the actual transcripts as exhibits on receipt of same. Because I am still pulling together the exhibits, I have not labeled them yet. Regardless, I am providing you the Petition, together with the exhibits I do have.

Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you.

Sincerely,


LIANE E. KERR,

w/Petition

COPY FRANK

STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

JUN 20 2017

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

Clerk District Court

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Distances

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner, _____

WARDEN GERMAN FRANK D

W/A L

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS

1. ALBERT RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PNM Penitentiary of New Mexico (name of facility and county of detention) by warden gorman franco (name and title of person having custody).

2. This petition

☒ [W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ [W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL
NO APPELLATE COUNSEL ON APPEAL →

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I TRIED TO SPEAK
TO COURT 1 TO NO
AVAIL. IRRECONCILABLE
CONFLICT.

COUNSEL MR. COSBY. BEFORE TRIAL BEGINS AND AFTER I
TRIED TO FIRE HIM IN FRONT OF JURY did VERBALLY
ASSAULT AND MAKE THREATS STATED, STUPID LITTLE BITCH
I promise to be ineffective assistance if you keep on
saying you want to go to trial as I INSIST.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

I HOPE
YOU CAN
LIVE.

(I don't know what this means. SIE)

I'll try, I TO A CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE AT TRIAL + ON APPEAL

I'VE WROTE ON EXTRA SHEETS OF PAPERS TO
EXPLAIN. SOME FACTS BEST AS I CAN.

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

+ EXHIBITS - EVIDENCE
ALLEGATIONS

YES, I WAS TOLD APPEAL WAS DENIED TO FILE
A HABEAS PACKET. NOW HERE IS THE
HABEAS.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

I RAISED THIS ISSUE IN FIRST HABEAS.
NOW THIS ONE IS TO ~~RE~~ RESUBMIT IT
AND FIX IT.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

TO BE APPOINTED ASSISTANCE FOR
Public defended post conviction division
to assist me to get AN EVIDENTIARY
HEARING to prove the ALLEGATIONS ARE TRUE

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

D-0905-CR-2007-00434 I'M NOT
SURE

(b) docket number:

D-0905-CR-2007-00434 DON'T
KNOW

(c) name of judge:

Teddy. L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700. N. MAIN ST
9th JUDICIAL DISTRICT COURT

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligibility AFTER 30 yrs plus. two 3 yrs
two tampering with evidence,
1st degree murder
2 tampering with evidence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE. P. COSBY

P.O. Box 3330

14. Did you appeal your conviction?

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court.

New Mexico Supreme Court of Appeals.

(b) The case name and docket number for each appeal:

(Don't know how to do this.)

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed Sometime Around August 2013.

Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

Competency Reevaluation, Ineffective assistance
of counsel, improper comments on silence, prosecutor
misconduct, prior bad acts.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG

505. Marquette N.W 87102

505. 796. 4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding: petition Habeas, denied, But I re petition motion to Recons. etc, answer, revised petition.

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

petition Habeas, But this one is to
Resubmit it to try to do it properly

(b) The name and date of each case:

9th Judicial district court, State of N.Mex. v. Abert
Ravine

(c) the docket number:

NOID-0905-CR-2007-00434

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

NA

(e) the result of each proceeding (Attach a copy of each decision.)

denied,

(f) The issues raised in each proceeding:

ineffective assistance of counsel,

(g) State whether a hearing was held in connection with each of these proceedings:

NO

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(b) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

NO

19. Do you seek the appointment of counsel to represent you?

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

am
T. J. Sorel
Court (name of court)

88101
Louis (city), New Mexico, (zip code).

(
Signature

AIBERT JOSE RAMIREZ

(
Address

D.O. BOX. 1059 SANTA FE 875

PNM No., if applicable

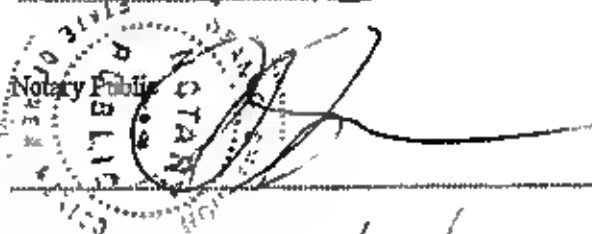
NOTARIZY PLEASE
5/25/2012

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

SUBSCRIBED AND SWORN TO before me this 12 day of JUNE, 2017, by

(Name of petitioner)

AIBERTO RAMIREZ



My Commission Expires:

4/23/2019

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MAIL (describe manner of service), this 13 day of JUNE, 2017.

(Signature of petitioner) AIBERTO RAMIREZ

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through July 1, 2015.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

End of Document

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THE WAY TO USE THE
EXHIBITS WITH THE ISSUES

I CLAIM + PRESENT.

JUST GO TO PAGE AND

OR EXHIBIT OR BOTH.

I AM NOT A LAWYER,

I HAD NO MORE PAPER
TO MAKE IT NICE + NEAT.

I HAD TO SEND IT OUT
ASAP. + COPIES + ALL.

IM BEING IGNORED BY
LAW LIBRARY IN PRISON.

PLEASE. EXCUSE MY

MISTAKES. I TRIED
MY BEST.

Facts to prove claim of
discovery, to prove claim of
INEFFECTIVENESS COUNSEL

See Exhibit 4, 5

MR. COSBY COUNSEL TRIAL DENIED
and failed to provide effective
ASSISTANCE.

A WEEK BEFORE TRIAL
I ASK TO FIRE MY ATTORNEY
DURING TRIAL IN COURT I
FIRED MY ATTORNEY. EACH TIME
THERE NO INQUIRE INTO WHY
I WAS EXPRESSING DISSATISFACTION
I WAS TOLD TWICE BY MR
COSBY BEFORE TRIAL STARTED
AND AFTER I TRIED TO FIRE
HIM IN COURT DURING TRIAL
COSBY STATED - I AM A LITTLE
STUPID BITCH AND MADE
THREATS, BY SAYING I HOPE
YOU GET LIFE, I ALREADY TOLD
YOU TO TAKE THE PLEA OR YOU
WONT BE PROVIDED EFFECTIVE
ASSISTANCE OF COUNSEL.

I WAS NOT ABLE TO PUT THE
ALLEGATIONS ON RECORD.

BUT SEE EXHIBITS (10) page 1, 2, 34, 5
(10) page 38-47

See EXHIBIT
page 47 page 53, 54, 55, 56, 57
EXHIBIT 13

page 2

I TRIED to address court my lawyer was not filing any of my motions I asked him to. CHANGE OF VENUE, EVEN though there was PRE-trial publicity concerning the case in small community of CUBS, NEW MEXICO. Some of this publicity inaccurately described Mr Ramirez as having attacked alleged victim on prior occasions, THE publicity was inaccurate and highly prejudicial and defense counsel should have at least raised the issue and requested a hearing. SEE EXHIBIT, EXHIBIT 13

Counsel should have at least filed a motion to suppress evidence that was illegally seized & inadmissible and highly prejudicial SEE EXHIBIT 11, or requested a hearing on this issue

SEE 11
EXHIBIT
page 48
49
50

Counsel did not provide me with all discovery, would not discuss who he was planning to call as witnesses and would not discuss intent to present the defense of insanity. Counsel did not file a notice of intent to present the defense

SEE 3
page 3, 4

EXHIBIT 1) page - 1, 2, 3, 4, 5

page 3

page 4, 10, 12, 13
Exhibit 1, 3, 10 page 47

Insanity, But instead of advocating zealously on BEHALF OF Mr. Ramirez's defense, counsel informed the court that HE would not be presenting expert psychiatrist, or physician, because Mr. Ramirez won't discuss the case with him and is unable to assist in the defense.

Counsel failed to alert the court to important facts in arguing the case. Mr. Ramirez was injured in an accident in 2007 which he began taking anti-depressant medication, & other medications. This became severe depression as he was unable to walk, work, or drive, could only walk with crutches, suffered from psychosomatic delusions, hallucinations, ~~the~~ counsel did not present evidence of the medication Mr. Ramirez was taking.

Mr. Ramirez felt his lawyer was against him, see page 4, 10, 12, 13
Exhibit 1, 3, ~~the~~

SEE EXHIBIT 1, page 1
EXHIBIT 10, page 10
page 4

COUNSEL Failed to File any
WITNESS list WHATSOEVER IN
SUPPORT OF MR. RANIERI'S DEFENSE
OF INSANITY and lack of capacity

MR. RANIERI had several witnesses
He wished to present in support of
his defense, including his Aunt,
Sister, Brothers, Friends, and
doctors who treated him after
accident.

COUNSEL failed to show courts JENNIFER SAID next
I was to cooperative
MR. RANIERI asserts that he de. dress used said F
would not
oppose
hers
received ineffective assistance of
COUNSEL for various reasons that
are, unfortunately, not on
record, because those matters
were not preserved in the record.

MR. RANIERI Request ~~that~~ that the
court grant him an attorney to
assist him in habeas proceedings
and to hold an Evidentiary
HEARING. ON INEFFECTIVE OF
COUNSEL.

page 5

Exhibit 1. 2:12 05 PM

↓ 10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
COUNSEL VERBALLY ASSAULTED ME I
ADVISED COUNSEL. I DID FALL DOWN
IN FRONT OF JURY BECAUSE OF
THE SHACKLES ON MY LEG TIED TO
THE TABLE. WHEN I WAS TOLD TO
RISE, SHERIFF CALLED ME TO DOOR
I FELL, JURY SAW MY SHACKLES,
WHILE MY LAWYER WENT TO TALK TO THE
JUDGE THE JUDGE, THE SHERIFF
DOUBTLY THREATENED ME AND TOLD
ME TO SAY I DID NOT FALL.
I WAS ASKED BY JUDGE DID YOU
FALL. I SAID YES THEN NO
BECAUSE SHERIFF WAS GESTURING
ME TO SAY NO. ONLY D.A.
WOULD SEE. SHE WAS SHACKLING
HEAD & FINGER AND SAYING NO.
I TOLD MY LAWYER THIS AND
ASK HIM WHY DON'T HE SAY
IT TO THE COURT.
HE SAID NO I ALREADY MADE
UP MY MIND.

Exhibit 1 page 1-S

page 6

Counsel Failed to Alert the court - that
Told him I did fail, JURY Saw
my shackles, Sheriff docently
manipulated me to say NO.
(TO GO AGAINST MYSELF) ASK docently CHAMBER
COUNSEL Failed to call, DR FINK,
DR. BURNSS, DR. MAXINE SWARTS
WHO I advised I had BEEN
SEXUALLY ABUSED MY MOMS
big friend, + neighbor SAM SAIZ
SEE EX.BIT 24, 5 PAGES 417, 17, 13
17, 18-27

COUNSEL Failed to call witness, PRICILLA
LOPEZ, RILEY TORRILLO, to help prove
I was the one being chased in
yard, to help prove my testimony
truthful,

SEE EX.BIT 7, 8, 10

COUNSEL Failed to investigate family
HISTORY OF MENTAL ILLNESS, and
family witnesses to discuss OF
INSANITY, 4. 5.

I would try to call him and
write to talk but ignored me or was
too busy to. see EX.BIT. 4, 5, 7,
page 18 to 24 + 27 + 30 + 47.

SEE

SEE PAGE 7

EX.B. + 2

EX.B. + 4.5 page 17 of 19
EX.B. + 25

COUNSEL FAILED TO KEEP PROMISES
MADE, OF BEING ABLE TO TESTIFY
ABOUT SEXUAL ABUSE AND THAT HE
WOULD FILE MOTIONS I ASKED HIM
TO FILE

PAGE 47

SEE EX.B. + 4, 5, 10

1, 1A

COUNSEL FAILED TO CALL MY FATHER & BROTHER
WHO WOULD TESTIFY ELADIO F-B-C-LO
WAS VIOLENT AND HAD ASSAULTED ME
ONCE THEN IN PAST.

MY FATHER AND BROTHER ARE WILLING
TO TESTIFY TO THIS AT HEARING.

COUNSEL FAILED TO CALL DR MAXINE
SWARTS AS WITNESS WHO WOULD
TESTIFY AS TO MY INSANITY DEFENSE
AND SEXUAL ABUSE AND INCOMPETENCY

SEE EX.B. + 9.10
PAGE 39 TO 43 + 47

COUNSEL FAILED TO PRESENT MY
DEFENSE AT TRIAL.

~~COUNSEL FAILED TO GIVE ME ADVICE WHEN~~

COUNSEL FAILED TO GIVE ME ADVICE WHEN
I ASKED OVERTLY WAS DRUNK WHEN I KILLED
MY STEP DAD. DO I TELL THAT OR NOT. HE DID NOT
1/21/25

page 8

COUNSEL Failed to GET MEDICAL RECORDS to SHOW I WAS ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of the plea did not explain the maximum & minimum time I was facing even though I tried to ask. (SEE PAGE 4) 5, 6

COUNSEL Failed to Be respectful and responsible and fulfill his duty of loyalty and advocate to me his client.

COUNSEL Failed to Argue I was the one being chased by ROBIELO that I was 100 pounds and ROBIELO 175 pounds, not 145 as medical EXAMINER said, page - 7-10
SEE EXHIBITS 2,

COUNSEL Failed to Alert court I was hearing voices during trial.
SEE EXHIBIT, 1, 1A, 4, 5, 6

SEE EXHIBIT - 9
PAGE 34, 35

APPROPRIATE COUNSEL FAILED TO
ARGUE THAT TRIAL COUNSEL
FAILED TO CALL WITNESSES WHO
WOULD HAVE TESTIFIED TO MY
MENTAL ILLNESS, DEFENSE OF INSANITY,
OR LACK OF CAPACITY, OR COUNSEL
MADE PROMISES NOT KEPT.

APPROPRIATE COUNSEL FAILED TO ARGUE I WAS
NOT GIVEN A FAIR SENTENCING
HEARING.

SEE EXHIBIT.

APPROPRIATE COUNSEL FAILED TO ARGUE ON
APPEAL I TOLD HIM I HAD BEEN
VERBALLY ASSAULTED BY TRIAL COUNSEL
LITTLE BITCH, AND THREATENED ME
WITH INEFFECTIVE ASSISTANCE IF
I REFUSED TO TAKE PLEA.

APPROPRIATE COUNSEL FAILED TO MAKE AWARE
SUPREME COURT OF APPEALS OF BUT
IN MY APPEAL I WANTED
TO REPRESENT MYSELF.

page 47

page 10

SEE EXHIBIT 10

APPROPRIATE COUNSEL FAILED TO ASK AN
APPEAL FOR AN EVIDENTIARY
HEARING ON ALL THESE PROBLEMS.

COUNSEL FAILED TO ARGUE IT WAS
~~NOT~~ DOUBLE JEOPARDY TO CHARGE 47
ME TWICE WITH 31 ALLEGES ^{page 47}
TAMPERING WITH EVIDENCE EXHIBIT 10

THE DISTRICT COURT FAILED TO
INQUIRE INTO THE MATTER
WHEN IT IS ON RECORD
MR. RAMIREZ COMPLAINED ON
MORE THAN ONE OCCASION ~~OF~~
TO THE JUDGE OF HIS FRUSTRATION
WITH DEFENSE COUNSEL. AND
EVEN THOUGH MR. RAMIREZ ASK
FOR SUBSTITUTE OF COUNSEL
TWICE BEFORE TRIAL AND
Fired HIS ATTORNEY TWICE
IN TRIAL IN FRONT OF
JURY. AND ASKED TO
REPRESENT HIMSELF.

SEE EXHIBIT 1, ~~10~~, 6
page 1 - SEE EXHIBIT 1
EXHIBIT 6 - page 28.

page 1 through 5

page 11

Exhibit 1,

Counsel Failed to communicate
Back with Mr. Ramirez, even
though Mr. Ramirez tried
to no avail.

Mr Ramirez received Ineffective
Assistance of Counsel and owed
his Constitutional Right to
Effective Assistance of Counsel.

I Mr. Ramirez ask the Court
to appoint attorney to assist
with habeas process.

Mr Ramirez ask for an Evidentiary
Hearing to develop the record
Necessary to prove allegations
- A disposition hearing also. -
Also attached witness statement by
my brother Joe Ramirez who spoke
to Mr Cosby and told me
to file my attorney.

Sincerely

Albert

Ramirez

PAGE
12

THE EXHIBIT'S
ARE ONLY LABELED
1 to 13 and pages 1-56
I did NOT label
1A, 1B, 1C, NO.

ONLY, 1 to 13.

They are all relevant
to certain facts
+ allegations to
support my claim
OF. Ineffective assistance
OF COUNSEL TRIAL +
APPELLATE ATTORNEY.

I ASK the courts
All them to NOT
dismiss my ~~CASE~~ ~~NOT~~
Habeas Because
I'm pro se, please appoint
me an attorney OR grant
an evidentiary hearing, or
preliminary hearing let me
prove my claim I
NEED A chance.

I do have A witness my
brother who can testify
to the threats made by
MR. COSBY. COSBY told my
brother to tell me to plea
my brother knows of the threats

COUNSEL did advise me to take
PICA But would not explain
what the PICA WAS.

Also COUNSEL did not tell
me the maximum time
I was facing
I did not know.
I thought the most
I could get was
154ES.

I did not know
MR. COSBY would not
answer any of my questions
or explain anything to me.

He was disrespectful,
MEAN, Rude, unprofessional
and did not provide
effective assistance.

COUNSEL would not call all witnesses
or file motions, change venue,
for perjury investigator, new
completing everything, - See Ex. 51 & 16

IF NOT FOR TRIAL COUNSEL
I EFFECTIVE ASSISTANCE OF
COUNSEL MR. ROMER WOULD OF
HAD A STRONGER CASE GOING
INTO TRIAL. MR. ROMER
WAS PREJUDICED BY COUNSEL
LACK OF EFFECTIVE ASSISTANCE
PLEASE I WOULD PAY @ FOR
AN ATTORNEY IF I HAD
MONEY EVEN AT SENTENCING
COUNSEL FAILED TO PROVIDE
EFFECTIVE ASSISTANCE.
TJS ROMER DENIED A FAIR

THIS IS TO HELP PROPERLY PRESENT
PETITION FOR HABEAS. THE FACTS
IN RECORD AND OFF RECORD.
THE CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL AT
TRIAL AND INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL.

I AM TRYING TO SHOW
I SHOULD BE GIVING
AN OPPORTUNITY TO SHOW
AND PROVE MY CLAIM +
ALLEGATIONS AND TO RECEIVE
ASSISTANCE FROM PUBLIC
DEFENDER OFFICE. ON POST
CONVICTION ASSISTANCE.

PLEASE AND THANK YOU
SO MUCH
FOR YOUR TIME HELP
KINDNESS GOD BLESS

IF counsel had effectively represented MR Ramirez. IT IS likely that I would OF Had a STRONGER CASE going into trial and this would have affected MR RAMIREZ'S decision to enter into a plea. MR RAMIREZ complained on more than ONE OCCASION TO THE JUDGE about his Frustration with defense COUNSEL. MR. RAMIREZ WAS denied effective ASSISTANCE OF COUNSEL.

I ASK for an ATTORNSY TO HELP. EVIDENTARY HEARING,

I ASK to Resubmit my Habeas petition this one to SEND TO SUPREME COURT.
PLEASE and Thank you for
your Time God Bless

PO Box Alberto
1059 Ramirez
Santa Fe NM 87501 69897

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RXEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE, ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD MR. COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM, I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

10/10/2013

11 of 18
page 1

why

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12:21


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

☐ ONAC/PC/IC/CM/J
P.O. Drawer 1128
Las Lunas, NM 87031

☐ GOCF
P.O. Box 520
Santa Fe, NM 87505

☐ LCCF
6900 W. Jollyon Dr
Hobbs, NM 88244

☐ ENM
P.O. Box 1659
Santa Fe, NM 87504

☐ SNMCF
P.O. Box 439
Las Cruces, NM 88004

☐ SNMCF-POU
P.O. Box 30005
Las Cruces, NM 88004

☐ WNMCF
P.O. Drawer 250
Grants, NM 87020

☐ NEMMCF
165 Doctor Michael Spinks Rd.
Clayton, NM 88413

Name _____

No. _____

Unit _____

Date: _____

ineffective assistance of appellate counsel
Saying in my appeal I abandoned to
show counsel at trial was ineffective it
shows on record I asked to call
Dr. Maxine Swartz and was denied
likely I would of gotten an
evidentiary hearing on appeal
also he did not argue I did not receive
a fair sentencing and double jeopardy
on tampering with evidence.

I ask for an evidentiary hearing.

*To show the true facts, not able
to write all the facts.

There is a lot more.

I want to make a proper
record.

(C)

☐ CNMCP/CMR/CMH
P.O. Drawer 1324
Las Cruces, NM 87031

☐ GOCF
P.O. Box 530
Santa Rosa, NM 88435

☐ LCCF
6900 W. Millon Dr
Hobbs, NM 88244

☐ FNM
P.O. Box 1659
Bunko, NM 87504

☐ SHMCF
P.O. Box 439
Las Cruces, NM 87034

☐ SHMCF-POU
P.O. Box 20005
Las Cruces, NM 87024

☐ WHMCF
P.O. Drawer 230
Grants, NM 87030

☐ NEMMCF
185 Center Michael Justice Rd.
Chaparral, NM 88015

Name _____
No. _____ Unit _____

Date: _____

Counsel did not call IS/CA Ramirez who would of testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime. He tried to go see me.

Counsel failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, But the court refused to let me say anything about conflict between I and counsel.

I tried to put in record what trial counsel said after I tried to fire him.

Court refused to inquire into it. If the court had I'd of got a new attorney or a mistrial. I asked to represent myself.

I was denied my Sixth amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record.

Thanks very much

1

☐ CHANCE/CHURCH
P.O. Drawer 1321
Las Cruces, NM 88001

☐ GOCF
P.O. Box 538
Santa Fe, NM 87504

☐ LCCF
6900 W. Millen Dr
Hobbs, NM 88244

☐ FNM
P.O. Box 1858
Santa Fe, NM 87504

☐ SMC
P.O. Box 638
Las Cruces, NM 88004

☐ SMC-POU
P.O. Box 20005
Las Cruces, NM 88004

☐ WMC
P.O. Drawer 258
Orlando, NM 87030

☐ MCM
105 Doctor Michael Leland Rd.
Clayton, NM 88415

Name _____

No. _____ Unit _____

Date _____

Yours
MR COSBY refused to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

also witness Precilla Lopez and Ricky Jaramillo 248 witnesses would of testified that I am Real skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call de Fink as a witness at trial as I asked. de Fink would of testified that I was not competent and mentally ill

I asked counsel to call de Joaze Burness to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness + intoxication history and drugs.

I did express dissatisfaction with counsel and the court failed to inquire into the matter.

Wish
MR COSBY promised if I testified I would be able to speak of sexual abuse by Nabor and my mom's boyfriend He tried to intimidate me.

IF counsel did not lie I would not have testified and trial may have been different. together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I wouldn't take plea.



CHANCERY/COMPTROLLER
P.O. Drawer 11228
Las Cruces, NM 87632

GOVT
P.O. Box 526
Santa Rosa, NM 86403

LCCP
6901 W. Milliken Dr
Tulsa, NM 87244

PNM
P.O. Box 1059
Santa Fe, NM 87504

SNACF
P.O. Box 639
Las Cruces, NM 88004

SHACF-PCH
P.O. Box 28005
Las Cruces, NM 88004

WRACF
P.O. Drawer 158
Grants, NM 87040

NEWMEX
185 Doctor Alfred St
Alamogordo, NM 88003

Name _____
No. _____ Unit _____

Exhibits Counsel
NAME
IS MR. COSBY

HABEAS PACKET Date _____

QUESTION # 3 AND 4 IN THIS WAS INTELLIGIBLE COMPACT

COUNSEL AT TRIAL VERBALLY ASSAULTED I MR RAMIREZ STATING I AM A STUPID LIKE BITCH AND GET BACK AND PROMISED TO BE INEFFECTIVE IF I MR RAMIREZ CONTINUED TO INSIST ON GOING TO TRIAL RATHER THAN ~~PLEA~~ PLEAD GUILTY AS COUNSEL WISHED. AND THREATENED MR RAMIREZ BY SAYING I HOPE YOU GET LIFE. COUNSEL WOULD NOT COMMUNICATE WITH I MR RAMIREZ AS I TRIED TO NO AVAIL.

COUNSEL WOULD NOT FILE MOTIONS FOR CHANGE OF VENUE EVEN THOUGH THERE WAS EXTENSIVE MEDIA THAT WAS INCOMMISSIBLE, SAYING MR RAMIREZ THREATENED TO KILL HIS MOTHER AND STEP FATHER AND HIS MOTHER KICKED HIM OUT DUE TO HIS VIOLENT TENDENCIES.

COUNSEL WOULD NOT SUPPRESS EVIDENCE THAT I WAS HIDING IN CAR AND THEY FOUND TAP WORDS TALKING OF SHOOTING PEOPLE.

MR COSBY WOULD NOT CALL DR. MARCANT SWARTZ TO TESTIFY FOR THE DEFENSE OF INABILITY TO PERFORM SPECIFIC INSTANT DUE TO MENTAL ILLNESS. SEVERE DEPRESSION ANXIETY, SCHIZOPHRENIA PERSECUTION, AND MY COMPETENCY TO STAND TRIAL.

I WANTED TO HAVE JURY INSTRUCTION OF THE ISSUE OF COMPETENCY RUL. 5-602 (B)(3) AND REFUSED TO OBJECT TO INSTRUCTION I ASKED HIM TO.

I ALSO TOLD COUNSEL I DID FALL DOWN WHEN SHERIFF CALLED ME TO WALK TO HIM AND I WAS COERCED INTO SAYING NO BY SHERIFF DOCKETY AND QUITTED BEHIND MY LAWYERS BACK TO SAY NO I ASKED HIM TO REQUEST A MISTRIAL TO NO AVAIL.

THE JURY SEEN ME SHOCKED I TOLD MY LAWYER TO REQUEST A MISTRIAL SHERIFF DOCKETY TOLD ME TO SAY I DID NOT FALL AND WENT TO HELP THE STATE. RE.

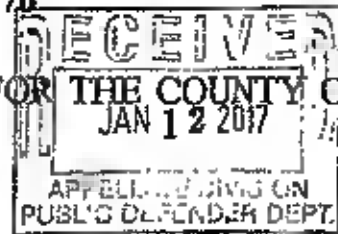
A true copy was served on all parties
at their counsel of record on date
filed.

Joey D. Moya,
Chief Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal
docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was
defendant, the district court entered judgment convicting defendant of willful
and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this
Court upon notice of appeal and statement of issues filed by defendant,
whereupon such proceedings were had that on December 1, 2016, a decision was
issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if
any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

(A)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHANDLER/CHANDLER P.O. Drawer 1328 Las Lunas, NM 87031	GOOF P.O. Box 520 Santa Rosa, NM 88435	LCCF 4900 W. Mullin Dr Hobbs, NM 88244	PMM P.O. Box 1059 Santa Fe, NM 87504	SNMCF P.O. Box 635 Las Cruces, NM 88604	SNMCF-POU P.O. Box 20005 Las Cruces, NM 88604	WNMCF P.O. Drawer 358 Grants, NM 87030	WENMDF 185 Donor Michael Jenkins Rd Clayton, NM 88415

Name _____

No. _____

Unit _____

START

Date: _____

All these ARE
PART OF old petition that
WAS denied and NO
lawyer to assist denied.

clerk 1 checked
10 sent 1 checked
(A B C D E)

copies of
my other files 3.22.17
4.25.17
lost by prison
officials

~~3 COPIES OF EACH~~
~~PAGE OF THESE 1"~~

End of
pages

could have

1) 3 choices Better Same or Worse

2 Take control one person 24/7 myself.

3) (RESPONSIBILITY)

Ability to respond rather than react.

10-15. emotionally stop of thinking
turning steps from progress.

SELF-STEERING
COPE

Mental illness is no excuse 4 bad behavior

I'm Sorry I take responsibility

in learning my ability to respond.

Thinking about was very intense
one goal to control one behavioral

I don't think impulsivity.

twice for the same. should be changed

I didn't mean it in an inappropriate way in impulsive way.

that's what I'm working
ON in therapy.

NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

1. I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
2. I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
3. I understand that there are limitations to treatment.
4. I understand that there are potential adverse outcomes to treatment.
5. I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
6. I understand that my treatment sessions will address my treatment goals.
7. I will complete assigned treatment homework (if any is assigned by my clinician).
8. Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)

#69597 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature Date

Beatrice Narciso, PhD, LPCC
Clinician (Printed/Typed Name)

B. Narciso, PhD, LCC 8/30/16
Clinician Signature Date

Eileen R. Missall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)

E. Missall 8/30/16
Reviewer Signature Date

Inmate Name: Ramirez, AlbertoNMCD#: 69597Facility: CNMCF/MHTC

Treatment Plan

Form CD-180108.1 (Rev 06/16/14)

New Mexico

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Exhibit 13

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JUNE 13, 2014

Teen charged with murder has competency issues

July 16, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Sharna Johnson, CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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OCT 13, 2013

Accused killer takes witness stand

October 10, 2013

By Robin Fernoff

CMI PROJECTS EDITOR

rfernoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on west Sixth Street for work.

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.



Albert Ramirez
On trial for murder

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Cloudy
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Humidity: 88%

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JUNE 13, 2014

Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnson: CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Teddy Hartley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disturbed young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and talked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez' mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Debra Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez' criminal case had been put on hold pending the outcome of the evaluations.

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Filed Under: News Tagged With: accused, albert, competent, mother, old, ramirez, ruled, stand, suspect, trial

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JUNE 13 2014

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson: Freedom Newspapers

A tip from a citizen led to the arrest of a Clovis teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W. 12th St. around 8:30 a.m. Sunday morning, a press release from Clovis police said.

He is accused of shooting Eladio Rubledo, 39, multiple times in the front yard of 512 W. 6th St., a residence Rubledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Curry County Adult Detention Center on \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Rubledo laying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Rubledo with his hands outstretched toward the victim as if he was holding a gun and then two more shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Rubledo, who was bleeding from the head and unresponsive, the affidavit said.

Rubledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Rubledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Networks program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

Calls to Debra Ramirez seeking comment were not returned Monday.



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Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fernoff
CNI Projects Editor
rfernoff@cnijournal.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Emilio Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 21, waited outside the home the morning of July 12, 2007, with a loaded .22-caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head execution style.

Chandler called the killing "premeditated...calculated...and cold-blooded." He noted a pre-sentence report branded Ramirez a malingeringer who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good lad," Israel Ramirez told Hartley. "If I could switch places with him, I would."



CNI staff photo: Robin Fernoff
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Emilio Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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EXHIBIT

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ST VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

10/10/2013

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RETURN AND INVENTORY

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

STATE OF NEW MEXICO

-VS-

2007 JUL 13 PM 3:30

Albert Ramirez,
D.O.B. [REDACTED]/88
SSN: [REDACTED] 7793,
[REDACTED]

D-0905 Subpoena best
CLERK DISTRICT COURT

and a silver blue Cadillac 4-door bearing Texas license W55HHS

I received the attached Search Warrant on 07/12/07 And executed it on 07/12/07
at 2235 Hours. I searched the person or premises described in the Warrant and left a copy of the Warrant with:

None present at scene
(name of the person searched or owner at the place of search)

Together with a copy of the inventory for the items seized. The following is an inventory of the property taken pursuant to the Warrant:

- 1 photo of suspect and unknown black male (Gang Writings)
- 1 paper with writing about shooting people
- 1 letter to Albert Ramirez denying his SSI benefits

This inventory was made in the presence of

Ricky M. Smith
Applicant for Search Warrant

and Randy Pitcock
Owner or other witness


Signature of Officer or Detective

Randy Pitcock
Signature of Owner or Witness

Return made this _____ day of _____, 2007 at _____ hours.

(Judge Clerk)

After a careful search, I could not find at the place, or on the person described, the property described in this Warrant.

(Officer)

(Date)

EXHIBIT (u)

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EX-B. 11

*Went over you
Thank!*

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**STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT**

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,
D.O.B. [REDACTED] 88

SSN: [REDACTED] 7793,

511 E. 6th Street, Clovis, Curry County, New Mexico,
and a silver blue Cadillac 4-door bearing Texas license W55HHS

Deanna Hunt
CLERK DISTRICT COURT

D-0905- *SW* 0200 7 00 001

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being duly sworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, stenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED] 88, Social Security Number [REDACTED] 7793, Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

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interview witnesses and other persons.

Contact was made with the 911 caller, Grace Finkey, who witnessed the incident, recognized the shooter, and contacted law enforcement. The victim, Eladio Robledo Valdez was pronounced deceased while at PRMC. According to the mother of the suspect, Albert has a large blue car, containing all his personal belongings. The vehicle was broken down in front of 511 E. 6th Street. Officers responded to the residence and observed the silver blue Cadillac parked on the street in front of the duplex. The vehicle contains a large amount of clothing and other personal items, possibly belonging to Albert Ramirez. The duplex at 511 E. 6th Street is currently vacant. The front window, facing north is open and raised approximately 3". The front and back doors are locked. The window on the east side of the building is unlocked with the screen removed. There are handprints on the exterior of the glass indicating that the window was pushed up to open the window. There are two cinderblocks under the window to provide easy entry into the window. The suspect, Albert Ramirez may be hiding within the vacant duplex to avoid detection and apprehension by law enforcement.

Based on this I believe that evidence relevant to the shooting may be within the residence or the vehicle described, and located at 511 E. 6th Street, Clovis, Curry County, New Mexico.

HEARAY CANT JUST SEARCH CAUSE WHAT HE BELIEVES, NO MATTER IF HE'S A COP!!! might be good to try and get whatever evidence found with the

Affiant is a full-time salaried, sworn Law Enforcement Officer currently employed with the Clovis Police Department. Affiant's current assignment is Detective with the Special Operations Unit, and member of the Major Crimes Unit.

warrant!

SUBSCRIBED AND SWORN TO BEFORE ME IN THE ABOVE NAMED COUNTY OF THE STATE OF NEW MEXICO,

THIS 12 DAY OF July, 2007.

Robert S. Oniz
JUDGE

Robert S. Oniz
TITLE

Robert S. Oniz
AFFIANT

Detective #98
TITLE

APPROVED BY ASSISTANT DISTRICT ATTORNEY

Matthew Chandler ON July 12, 2007

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1 offer an instruction on competence, nor did he object to the instructions given the jury.
 2 Therefore, this issue was not properly preserved for appeal.”).

3 **B. Defendant did not receive ineffective assistance of counsel**

4 (27) Defendant's second argument is that he was denied effective assistance of
 5 counsel because defense counsel “lacked the necessary assistance of [Defendant]
 6 himself”; failed to “‘seek the assistance of necessary experts,’ and if more money was
 7 required to seek such assistance on an urgent basis counsel should have requested it”
 8 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
 9 motions to determine competency, resulting in prejudice to Defendant. Counsel has
 10 abandoned the claims that trial counsel failed to call other witnesses or made promises
 11 to the Defendant because these claims are unsupported by the record. As such, we
 12 decline to review these claims.

13 (28) One week prior to trial, the district court denied Defendant's motion to appoint
 14 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
 15 counsel informed the court of his decision not to call a witness on the record, as it was
 16 against Defendant's wishes. Defendant then addressed the court, against counsel's
 17 advice, about how his defense had been limited, how his mental illnesses affected him,
 18 the amount of media his case was receiving, the quality of his attorney's

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1 competency by Dr. Fink in January 2013, Defendant spoke directly to the court,
2 though he was represented by counsel, and asked for a fifth forensic evaluation to
3 determine his competency. Defendant argued that a new evaluation would show he
4 was suffering from "psychosomatic delusions and hallucinations and severe
5 depression and anxiety." The judge listened to Defendant's request and then denied
6 it.

7 (17) This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124
8 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported
9 declaration against competency made prior to trial rose to the level of reasonable
10 doubt. In that case, just before trial, the defendant's counsel asked the court to find
11 that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant's
12 counsel cited her own experience with the defendant as the basis of the request, stating
13 her belief that his condition had deteriorated because he had been held in isolation
14 since the competency hearing. *See id.* ¶ 8. The Court held that while "a court may
15 consider defense counsel's observations and opinions . . . those observations and
16 opinions alone cannot trigger reasonable doubt about the defendant's competency."
17 *Id.* ¶ 29. The Court also concluded that the testimony of experts is not required to
18 support a contention of incompetency, but "[i]nstead, a defendant could offer an

9
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1 representation, motions he wanted filed, and other issues he indicated that he would
2 present in his appeal.

3 (29) Defendant then demanded to be the first defense witness so he could
4 communicate his defense. During his direct examination, Defendant refused to
5 answer many questions directly saying he wanted to "explain everything." Defendant
6 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
7 the Defendant and recess the trial. Later, after the parties rested, Defendant had
8 another outburst, complaining that he had a right to know what the jury instructions
9 would be so that he could file motions. The court told Defendant that he was being
10 well-represented and the instructions were fair.

11 (30) At Defendant's sentencing hearing, Defendant complained to the court that his
12 defense counsel had failed to effectively represent him and that he did not receive a
13 fair trial. Defendant argued that the jury would not have convicted him had it fully
14 understood that he was the victim. The district court assured Defendant that he had
15 received excellent representation and pronounced the sentence.

16 (31) "This Court has repeatedly stated that ineffective assistance of counsel claims
17 are best served through habeas corpus proceedings so that an evidentiary hearing can
18 take place on the record." *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949

Expressed dissatisfaction
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deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246. "Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury." *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. [10-10-13 CD B 2:07:30-2:41:36]

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was "not fair" because he wasn't being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. [10-10-13 CD B 10:40:41-10:58:56] The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. [10-10-13 CD B 3:45:47-3:46:20]

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. "The issue of a defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings."

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Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury "shall be instructed on the issue." In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel's assertion. "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required..." *Drope*, 420 U.S. 162, 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181.

Mr. Ramirez's case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

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relates that "for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders..." and that "[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder." Peter Tyrer, Ruger Mulder, et al, "Personality disorder: a new global perspective," World Psychiatry, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/>.

The two cases, *Flores* and Mr. Ramirez's, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez's need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

Ex. 10

page 4

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMNTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION, IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE, THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

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(citation omitted). "Generally, only an evidentiary hearing can provide a court with sufficient information to make an informed determination about the effectiveness of counsel." *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 ("A record on appeal that provides a basis for remanding to the trial court for an evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims are heard on petition for writ of habeas corpus . . ."); *State v. Telles*, 1999-NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the "proper avenue of relief [from ineffective assistance of counsel] is a post-conviction proceeding that can develop a proper record").

(32) Though the district court repeatedly observed that defense counsel was providing excellent representation to Defendant, the court did not hold an evidentiary hearing. Therefore, the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant's ability to bring such a claim via habeas corpus proceedings.

C. The district court did not abuse its discretion denying a mistrial based on Deputy Loomis' commentary on Defendant's silence

(33) Defendant's third issue is that the court erred in denying his motion for a mistrial based on an alleged improper comment about Defendant's silence after he had

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foretell testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. [RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question

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1 observations and opinions alone cannot trigger reasonable doubt about the defendant's
2 competency.").

3 (25) Here, defense counsel merely stated his beliefs that Defendant was not capable
4 of assisting in his own defense and that Defendant did not have the capacity to
5 determine whether or not to testify. In response, throughout the trial, the judge did
6 everything within his power, under the rules, to address the Defendant's concerns with
7 his physical condition and his inability to understand the proceedings, allowing a
8 nurse to examine him during the trial and consistently explaining to the Defendant
9 what was happening. Accordingly, the district court did not abuse its discretion in
10 denying Defendant's request for a forensic evaluation during trial because relying
11 only upon his own observations, defense counsel failed to substantiate his assertions.

12 (26) Further, had the district court found reasonable doubt as to Defendant's
13 competency to stand trial, Defendant would not have been entitled to a competency
14 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
15 only recourse is to request a jury instruction on the issue of competency. See Rule 5-
16 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
17 on competency to the court or objecting to the instructions as offered. See *State v.*
18 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 ("Defendant did not

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back

told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Shwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything..." Mr. Ramirez continued,

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That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about how he had not been properly evaluated and represented, the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial. [See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

30 Exhibit 9 Page 37

EXHIBIT 9

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p. 820

II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland's* two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

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CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION, OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE. <i>What is this?</i>
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THERE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:26 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINE, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

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Exhibit 9
SEX ABUSE

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for his expert's presence if sur-rebuttal was allowed. [Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent [See Supp. CD, 3:51:56 to 3:52:00], the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. [CD 10-10-13, 4:34:39 to 4:36:02] When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. [CD 10-10-13, 4:36:02 to 4:39:12] Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. [CD 10-10-13, 4:41:38 to 4:42:15]

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. [CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. [CD 10-11-13, 11:45:13 to 3:06:20]

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NO DEFENSE
AT TRIAL

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Exhibit 8

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1 its discretion in denying a mistrial.

2 **D. Defendant was not prejudiced by the jury seeing his leg restraints**

3 (39) Defendant's fourth issue is that he was prejudiced when the jury saw his leg
4 restraints when he stumbled as he stood up at one point during the first day of trial.
5 However, he concedes that he did not ask the court to make a finding of prejudice or
6 declare a mistrial and asks this Court to review the possibility that the jury saw his leg
7 restraints for fundamental error. The State argues that the factual record does not
8 support Defendant's contention that the jury saw him shackled because all the parties
9 agreed that the table skirt blocked the jury's view.

10 (40) "To preserve a question for review it must appear that a ruling or decision by
11 the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not
12 properly preserved, we consider the claim under the fundamental error exception to
13 the preservation rule. See *State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M. 513,
14 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant
15 handcuffed for fundamental error because the defendant did not request a mistrial, did
16 not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*,
17 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2)
18 NMRA).

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COURTROOM ONE

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Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:36 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX. 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE GROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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Exhibit 7

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:06:50 PM		AWARE OF BROTHER BEING PLACED IN FOSTERCARE
3:07:31 PM		GIVING STATEMENT TO DETECTIVE ON JULY 12TH THE DAY OF SHOOTING
3:08:35 PM		TOLD MEMBERS OF JURY NEVER SAW HIM ACT OUT, HE WOULD GET UPSET
3:09:22 PM		DOES NOT REMEMBER WHAT SHE TOLD DETECTIVE, NOW SHE REMEMBERS WHAT SHE TOLD DAVID LOERA
3:11:35 PM		CONTINUES TO REFER TO STATEMENT SHE MADE
3:12:59 PM		BENCH CONFERENCE
3:13:50 PM	CHANDLER	CONTINUES TO REFER TO HER STATEMENT
3:14:33 PM		GO BACK TO THE PHONE CALL, HE WAS MAD AT YOU THE DAY BEFORE THE SHOOTING, "WHAT IS WRONG WITH BEING MAD EVERYBODY GETS UPSET"
3:15:09 PM		I DID NOT KNOW HE WAS TRYING TO GET A GUN
3:16:00 PM		REFERS TO HER STATEMENT
3:16:06 PM	COSBY	PAGE AND LINE PLEASE
3:16:20 PM		NO I DID NOT KNOW, EVERYBODY KNEW NOT TO GIVE HIM A GUN
3:16:55 PM		TRAINING, EDUCATION AND EXPERIENCE
3:17:05 PM		YOU WANTED TO KNOW WHY HE DID THAT WHEN HE CALLED FROM JAIL, NOBODY WAS THERE WHEN IT HAPPENED
3:18:13 PM		YOU DO NOT KNOW WHAT HAPPENED AT 512 W. 6TH, "I WAS NOT THERE"
3:19:18 PM		YOU HAVE BEEN TALKING TO HIM EVERY NIGHT
3:19:42 PM		BENCH CONFERENCE
3:20:41 PM	COSBY	RDEX - ABOUT YOUR STATEMENT ABOUT WHAT YOU ARE SAYING YOU WERE TELLING YOUR BROTHER TO APOLOGIZE TO YOUR MAMA
3:21:58 PM		NOT SURE WHY HE WAS WEARING CRUTCHES
3:22:30 PM	CHANDLER	SPECULATION OBJECTION
3:22:40 PM	COSBY	RESPONSE ABOUT WHO GAVE HIM THE GUN "HE WAS HAVING ISSUES ABOUT HE THOUGHT SOMEBODY WAS AFTER HIM"
3:24:25 PM		SHE ALREADY KNEW ABOUT SHOOTING BECAUSE HER MOM CALLED HIM
3:24:37 PM		SHE BARELY TALKED TO ELADIO, NEVER CLAIMED HIM AS STEP FATHER
3:24:59 PM	CHANDLER	RXEX - YOUR CONCERN WAS ABOUT ALBERT'S STATE OF MIND
3:25:49 PM	COSBY	OBJECTION

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Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 988
SSN: [REDACTED] 7793

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Date: 04/24/2007 11:30
Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG:tid, Qty:21, Days:7, Refills:0
Lexapro 10 MG TABS, SIG:qd, Qty:30, Days:30, Refills:2
Refer to unum orthopaedics
pt has anger issues and is somatising
detailed discussion with brother about pts visits
otc knee brace, pt needs pshychiatric help
refer to MHR, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

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EXHIBIT 7

page 30

Patient: 14154.1 - ALBERTO J. RAMIREZ

DOB: 988

SSN: 7793

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Date: 04/17/2007 12:15

Provider: KIRAN SHARMA MD

Musculoskeletal system:

General/bilateral: * Musculoskeletal system: normal

Knee:

General/bilateral: * Knees showed abnormalities * No tenderness on palpation of the knee * No pain was elicited by motion of the knee * Knees demonstrated normal movement * Knees demonstrated no muscle weakness

Right knee: * Examined

Left knee: * Examined

ASSESSMENT

Bilateral knee pains

PLAN

KIRAN SHARMA MD ordered

• Urinalysis and urine drug screen

• CBC

• A comprehensive metabolic panel

• Serum TSH level

• An X-ray of both knees

• Consultation with a physical therapist

Refer to MHR for counselling and further evaluation

trying to call mom to find out more about pts mental health, unable to reach her

I was
Injured

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/17/2007 14:36

Ex-B. A 7.

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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Time	Speaker	Note
9:57:26 AM	CHANDLER	CLOSING ARGUMENT
10:10:27 AM	CHANDLER	CONTINUES CLOSING ARGUMENT
10:45:29 AM		CONTINUES CLOSING ARGUMENT
10:46:27 AM	COSBY	CLOSING ARGUMENT
10:58:56 AM		CONTINUES CLOSING ARGUMENT
11:30:00 AM	CHANDLER	BRIEF REBUTTAL
11:39:16 AM		CONTINUES BRIEF REBUTTAL
11:40:01 AM	COURT	READS INSTRUCTION 19 BEFORE DELIBERATION IS BEGUN
11:41:14 AM	COURT	ANNOUNCES ALTERNATES
11:42:36 AM		JURY EXCUSED TO BEGIN DELIBERATION AND ALTERNATES EXCUSED
11:43:09 AM	DFT	DFT WANTS TO SAY SOMETHING
11:44:05 AM	COURT	YOU CANNOT SAY ANYTHING
11:44:13 AM	OFF RECORD	
3:03:40 PM		JURY SEATED IN BOX
3:04:08 PM	COURT	READS THE VERDICT GUILTY COUNT 1 1ST DEGREE MURDER
3:04:45 PM		GUILTY COUNT 2 TAMPERING WITH EVIDENCE
3:04:58 PM		GUILTY COUNT 3 TAMPERING WITH EVIDENCE
3:05:14 PM	COURT	DFT WISHES TO HAVE THE JURY POLLED, JURY POLLED BY NUMBER
3:06:35 PM	COURT	READS FINAL INSTRUCTION TO JURY BEFORE EXCUSED
3:07:13 PM		JURY EXCUSED FROM SERVICE
3:07:51 PM	CHANDLER	STATES REQUESTS TO MOVE INTO SENTENCING
3:08:07 PM	COSBY	ASKS FOR A 60 DAY EVALUATION
3:08:21 PM	CHANDLER	THIS SENTENCE IS A LIFE PLUS SIX YEARS
3:09:02 PM	COURT	IT IS MANDATORY TO LIFE
3:09:15 PM	COSBY	HE HAS A RIGHT TO AN ALLUCITION
3:09:40 PM	COURT	WE WILL SENTENCE AFTER PRESENTENCE REPORT
3:09:59 PM	COSBY	REQUESTING A 60 DAY EVALUATION
3:10:16 PM	COURT	ORDER THE PRE SENTENCE REPORT ,
3:10:31 PM	RECESS	

Exhibit 6
 Tried to Alert Court of
 Conflict of Interest Between
 Counsel and I and Anne
 Parram. I was denied.

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EXH 4.5

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1 competent to make the choice whether or not he should testify. The court advised
2 Defendant of his right. Defendant stated that he was mentally imbalanced and he
3 wanted the jury to be told about his medical problems. The court found that the
4 concerns represented personal issues not rising to the level of incompetence and
5 denied the motion.

6 (24) Rule 5-602(B)(2)(b) requires that "[i]f the issue of the defendant's competency
7 to stand trial is raised *during trial*, the trial jury shall be instructed on the issue."
8 (emphasis added). The reasonable doubt requirement "is implied" under Rule
9 5-602(B)(2)(b) when the issue of competency is reraised at trial. *Rael*,
10 2008-NMCA-067, ¶ 22 ("[I]f a requirement of reasonable doubt were not read into
11 Rule 5-602(B)(2)(b), any defendant would be able to raise the issue of competency
12 and have the jury decide it even in the absence of the slightest bit of evidence that the
13 defendant was incompetent. Such a result would be contrary to our well-established
14 guidelines regarding the interpretation of Supreme Court rules."). However, in the
15 absence of reasonable doubt, the district court need not submit the issue to the jury.
16 See *id.* ¶¶ 22-23, 25. As such, assertions as to the question of incompetency must be
17 properly substantiated to show reasonable doubt. See *Flores*, 2005-NMCA-135, ¶ 29
18 ("[A] court may consider defense counsel's observations and opinions, but that those

EXH 13 4.5

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Based on the facts in the record, Defendant sensibly does not claim he suffered prejudice from this asserted deficiency in Mr. Cosby's performance. Considering Defendant's history of refusing to cooperate in evaluations, there can be no confidence he would have cooperated even if Mr. Cosby had arranged an emergency evaluation. And, considering the trial court's first-hand observations of Defendant's behavior and dilatory conduct over the course of six years, there is no assurance the trial court would have found Defendant incompetent even if an evaluation concluded otherwise.

Second, Defendant claims Mr. Cosby was deficient because his failure to arrange for expert testimony precluded Defendant from relying on mental illness or lack of capacity defenses. [BIC 37-38] At the same time, Defendant effectively concedes Mr. Cosby's performance was not deficient in this regard by acknowledging the prosecution was prepared to offer rebuttal expert testimony to the effect that Defendant was feigning mental illness and cognitive deficiencies.

[Supp. CD, 3:51:50 to 3:52:12, 3:57:00 to 3:57:33, 4:01:06 to 4:01:24, 4:08:54 to 4:09:13] This indicates Mr. Cosby's decisions may have represented "a plausible, rational strategy or tactic," which is the antithesis of incompetent performance.

This specific claim of deficient performance also lacks support in the record, because Defendant repeatedly refused to cooperate in evaluations that *might* have

I counted this as
BUTNESS IED I claim v. B. t. 4.5
comply.

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Mrs Ramirez reported that she put Mr Ramirez out of her home as a result of him b violent manner and smashing windows in her car and house. She also reported that was verbally abusive toward her and this has been confirmed by staff at this facil heard Mr Ramirez being verbally abusive toward his mother over the telephone. reported that she had a restraining order in place against Mr Ramirez following her car windows and that he violated this order both on the day of the instant off day before. She also reported that Mr Ramirez was jealous of her boyfriend.

MEDICAL HISTORY

Mr Ramirez also provides a highly convoluted and unbelievable story of his arms being permanently damaged as a result of having to drive a car with manual transmission all day. He will attempt to present evidence of his physical impairment by showing the examiner his arm, which has no physical defects. He also has a story of walking on crutches and having his knee bandaged in a manner that no medical facility would ever sanction. He was examined by the medical physician back in County Detention in Curry where he made repeated daily efforts to get medical attention until the physicians refused to grant further medical evaluations. He has also been examined by the medical physician at this facility and despite continuous complaints of chronic pain and stating he is hunch backed, he has no acute or chronic medical concerns.

SUBSTANCE ABUSE HISTORY

Mr Ramirez reported that he has smoked Marijuana and that his prior criminal history has been associated with smoking marijuana. He has endorsed using cocaine, crack cocaine and methamphetamines in the past. In addition the police officers reported that they could smell alcohol on his breath at the time of arrest for prior offences.

ABUSE HISTORY

Mr Ramirez has reported physical abuse at the hands of his foster father and sexual abuse by his mother's boyfriend and a neighbor. However, it is notable that he reports that his mothers boyfriend (the victim in the alleged offense) and the neighbor were gay and that they were lovers which is why they abused him. Given that the neighbor is also a witness to the alleged offences however, it is this examiners opinion that this report of abuse and the sexual orientation of these two men is highly suspect.

CRIMINAL HISTORY

Mr Ramirez reports that his only prior criminal history has been in relation to smoking Marijuana and he alleges that one of these charges was an accident as he did not know the cigarette contained marijuana. This examiner did not have access to an NCIC or his Juvenile record however a police report relating to a prior arrest includes the charges of Larceny (under \$250.00, Evading a Peace Officer and Possession of Marijuana.

PSYCHIATRIC HISTORY

There is no indication from Mr Ramirez's records that he has ever required inpatient or out patient psychiatric intervention. He reports that he did see a counselor and this was related to "anger management" however, there is no evidence of any prior mental illness despite Mr Ramirez reporting a history of depression and anxiety and stating that he was on seven

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RAMIREZ, Albert Jose
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consists of five scales, i.e., Psychosis; Neurologic Impairment; Amnestic Disorders; Low Intelligence; and Affective Disorders. The total score on this measure is identified as being the most useful for differentiating exaggerated from non-exaggerated symptoms. SIMS total scores equal to or greater than fourteen are suggestive of symptom exaggeration. Mr. Ramirez's score on this measure was 47.

9 Additional review of the SIMS scale scores is notable for elevation. Specifically, his scores suggest an endorsement on all five scales with the highest elevations being on the Neurologic impairments and the Amnestic disorders scales. He also over endorsed the Psychosis as well as the Affective functioning scales. The lowest elevation was found on the Low Intelligence scale.

This pattern of responses provides evidence of Mr. Ramirez's tendency to exaggerate a range of cognitive and psychiatric symptoms. Mr. Ramirez has reported to this examiner that he does not want to return to the Detention Center as he describes his previous behavior in Detention as "not good...crying, screaming, yelling, kicking walls I was angry 'cos they wouldn't give me my meds".

CASE FORMULATION

Mr Ramirez is a 19 year old Hispanic male admitted to the Forensic Division of the New Mexico Behavioral Health Institute at Las Vegas (NMBHI) on 5th June 2008. A Court finding of incompetence to stand trial, and subsequent commitment for treatment to attain competency to proceed in a criminal case was approved on 17th April 2008. Mr. Ramirez is currently charged with one open count of Murder in the first degree, and two counts of Tampering with Evidence for events that allegedly occurred on July 12th 2007.

Mr Ramirez appears to have had a disrupted childhood, despite his assertion that his mother was raising him well the fact that he was in two foster placements suggests that he was demonstrating difficult to manage behaviors. This was confirmed by Mrs Ramirez. Mr Ramirez also attended special education and became involved with the criminal justice system at an early age prior to 16. His behavior appears to have spiraled downwards to the point where he is alleged to have committed first degree murder. Mr Ramirez has reported sexual and physical abuse however given his tendency for over reporting and his clear need to externalize blame for his actions on others it is difficult to ascertain the validity of this reported abuse. Mr Ramirez mother stated that her boyfriend (the victim on the alleged offence) had never abused Mr Ramirez and that he was jealous of her boyfriend.

Mr Ramirez demonstrates difficult to manage behaviors however in this examiner's opinion these are the result of his personality style rather than as a consequence of mental illness. He does demonstrate difficulties in managing his mood and controlling his impulsive behavior but as previously stated in my clinical opinion this is the result of his personality style and an inability to take responsibility and consider the consequences of his actions.

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Disclosure of Limits of Confidentiality and Informed Consent

Prior to the initiation of the forensic evaluation, Mr. Albert Ramirez was informed of the purpose of the evaluation, about my role as a forensic psychologist, that his participation was voluntary, and that the information that he provided in the evaluation may not be confidential. The defendant was unable to communicate that he understood the purpose of the evaluation and that he was going to undergo a forensic evaluation. He was then informed that information from the evaluation would be provided to the Court regarding his current cognitive and intellectual capabilities and that the information he provided was not confidential. The defendant consented to proceed with the evaluation by signing the "Statement of Rights and Limits of Confidentiality" disclosure form, which was explained to him and outlines the purpose of the evaluation.

Mr. Ramirez was informed that he has the right to refuse to participate in the evaluation or answer specific questions, and the fact that in addition to his attorneys, the report and/or information may be disclosed to the Court and/or the prosecution trial attorneys. He was also informed that the psychologist may also be asked to testify with regards to information gathered in the evaluation. The defendant attempted to participate in a structured clinical interview, but was unable to complete the interview or participate in neuropsychological and psychological tests and questionnaires, or complete a competency test due to his current psychological and emotional state. As a result, the testing session lasted a total of 3.0 hours. The evaluation was conducted in an adequate environment and the results are believed to represent a valid measure of the defendant's current cognitive and emotional functioning and status.

SOURCES OF INFORMATION:

- 4
1. Clinical interview with Mr. Albert Ramirez (defendant)
 2. Interviews with Brett Carter and Chandler Blair (attorneys for defendant)
 3. Request For Expert Witness/Investigator
 4. Clovis Police Department
 - a. Investigative Report: Randy Pitcock, Detective; 7/12/07
 - b. State of New Mexico Uniform Incident Report; 7/12/07
 - c. State of New Mexico Supplemental Report; 7/13/07
 - d. Supplemental Report Narrative; 7/23/07
 - e. Supplemental Report: Homicide; 7/12/07
 - f. Supplemental Report: Officer Antonio Bosque; 7/13/07
 - g. Felony Case File- Ivan Vasquez (exhibit 9)
 - h. Criminal Trespass Notification (exhibit 10p)
 - i. State of New Mexico Uniform Incident Report; 6/21/07; (exhibit 10q)

MAR 10 2008

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COURT: Ninth Judicial District Court
Curry County
State of New Mexico

PLACE OF EVALUATION: Curry County Courthouse
Clovis, New Mexico

Reason for Referral and Charges

The defendant, Mr. Albert Ramirez, was referred for a Forensic Neuropsychological Evaluation to provide information regarding his current cognitive, psychological, and emotional functioning. Mr. Ramirez' attorneys have expressed concern regarding his competence to stand trial as he has been unable to discuss any aspect of the case with them, despite numerous attempts. They have also described his behavior as bizarre with confused and disorganized thinking. His overall functioning will be evaluated in terms of his competency to stand trial. Mr. Ramirez has been charged with Murder (Open Count) and Tampering with Evidence (2 counts), for events that occurred on or between July 12, 2007, in Curry County, New Mexico. Mr. Ramirez is incarcerated at the Curry County Detention Center (CCDC).

New Mexico Criteria for Determining Competence

(1) The Client must have a factual understanding of the charges and legal proceedings, (2) The Client must also have a rational understanding of the charges and legal proceedings, and (3) The Client must have the ability to assist his or her attorney (State vs. Rotherham, 1996).

Note:

The following report and opinions are based on information made available to the psychologist at the time of the evaluation. Unless specifically noted, there has not been a systematic effort made to substantiate the full accuracy of all of the information provided in this report. The report is based on the assumption that the information provided is reasonably accurate, unless noted to the contrary. The psychologist reserves the right to modify opinions or conclusions, if additional information relevant to the findings is provided at a later date.

Exhibit 4.5

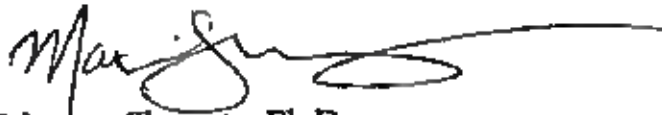
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depersonalization, inappropriate mood and affect, and poor judgment, reasoning, and insight. Mr. Ramirez reported numerous times "There's something wrong with my mind." Because of his current mental state, he was unable to complete a formal evaluation.

Based on his current presentation, Mr. Ramirez is not capable of competently proceeding with adjudication and handling the stress associated with the legal process. In his current state, he has been unable to assist his attorneys in his defense as he is unable to communicate in a logical or rational manner. He is also unable to provide any assistance to his attorneys regarding pertinent circumstances or events that led to his arrest in reference to the alleged charges. It is therefore the opinion of this examiner, that Mr. Albert Ramirez is not competent to stand trial.

Thank you for your referral.

Respectfully submitted by:



Maxann Shwartz, Ph.D.
Licensed Psychologist

room involved in this delusions from this

Communication: His speech was pressured and rambling. At times, he was able to comprehend questions but was unable to provide consistent or appropriate responses. **Sleep/Diet:** Mr. Ramirez reported "I can't sleep at all...I have physical pain and mental pain...I hear people talking in my head." He indicated that his appetite fluctuates and that he has lost weight since being incarcerated.

Planned **Suicidal Ideation, Intent, or Plans:** He denied a history of suicidal ideations, intent, plans, or attempts, stating "No, they'll put me in that little room."

1/20 **Substance Abuse History:** Mr. Ramirez acknowledged using illegal drugs and alcohol in the past.

Current Medical/Physical Concerns and Medications: He denied past or present use of medications, including being prescribed psychotropic medications.

Current Mental Health Status: Mr. Ramirez presented with symptoms associated with a significant mental illness, including heightened instability of mood. Specifically, he evidenced a mixture of characteristic signs and symptoms involving a range of cognitive and emotional disturbances that may be associated with the initial onset of a psychotic disorder. *Not healthy face strong strong 4/5*

DIAGNOSTIC IMPRESSIONS

RULE OUT-

Axis I: 295.30
295.70
309.81

Schizophrenia, Paranoid Type
Schizoaffective Disorder, Bipolar Type
Posttraumatic Stress Disorder, Chronic

Axis II: 799.9 Diagnosis Deferred

Axis III: Defer to Physician Report

Axis IV: Legal Problems

Axis V: 30

CONCLUSION

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male, with no known documented history of mental illness. However, throughout the evaluation, he evidenced a constellation of symptoms characteristic of Schizophrenia, including paranoia, psychoses, loose associations, disorganized thinking, poor reality testing,

Exhibit 4.5 page 1

Detention Center and had his undershirt on backwards. Mr. Ramirez was unable to perform even simple, goal-directed tasks. He maintained minimal to no eye contact. He evidenced uncontrollable crying throughout the evaluation with uncontrollable shaking. His attorney, Brett Carter, was present in attempt to calm him down and encourage him to participate in the evaluation. Food (McDonald's) was also used as a reinforcer and as an attempt to calm him down. While Mr. Ramirez was eating, he appeared to be more placated and was able to answer several questions. Specifically, he elaborated on being abused by several people, including his foster dad (physical abuse), a neighbor (sexual abuse) and his mother's boyfriend (sexual abuse). However, the majority of his responses to this examiner's questions were answered with "I don't know," or "that's all I know." Otherwise, he attempted to cooperate but eventually would start crying and become hysterical. Occasionally, he was able to provide several coherent and logical responses, however, his thinking would then be followed with tangential remarks with frequent references to his foster dad or paranoid verbalizations, i.e. "I'm scared of everyone. That's all I know. There's something wrong with my mind." For the most part, he was unable to provide any relevant background history. Mr. Ramirez was questioned numerous times about what happened regarding his alleged charge of murder and replied each time with "I used to be a good kid," or "I wasn't like this," and "I just want to talk to my mommy." Mr. Ramirez was unable to read as he could not maintain attention or concentration. He was given the Trail Making Test and was unable to complete one Trail. In sum, he was unable to complete any standardized testing procedures.

Orientation: He was oriented to person, but was poorly oriented to time, date, or location.

Affect/Mood: Mr. Ramirez' mood was labile with congruent affect. He stated that his mood was "very depressed, very bad...I'm so depressed!"

Perception/Thought Process: His thought process was tangential and loose. His thinking was easily derailed as he evidenced paranoia with depersonalization, i.e. "I can't feel my arm that much...I don't know," "I wasn't like this," and "What happened...the real me is full of pain." He acknowledged that he experiences auditory hallucinations, stating "I hear people talking in my head...saying kill myself." He denied visual hallucinations. He presented with frank paranoid ideations.

Mini Mental Status Exam: Mr. Ramirez was administered the Mini Mental Status Examination (MMSE), a widely used screening instrument used to assess cognitive impairment. His results were within the severely impaired range (16/30) and appeared to be due to the presence of a functional psychosis. Mr. Ramirez exhibited poor immediate memory, concentration, and attention.

Memory: His overall memory appeared questionable, e.g. he could not remember the city where he was born.

Judgment/Insight: Impaired/Impaired

delusional
thoughts

Exhibit page 19

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16. Photo (exhibit 10d)
17. Media Advisory Clovis Police Department (exhibit 10e)
18. Grah's notes/ Action Sheet (exhibit 10f)
19. Inmate Calling Solutions (exhibit 10g)
20. Plateau Wireless (exhibit 10h)
21. Call Records 505-309-7772 (exhibit 10i)
22. SMS Records 505-714-2165 (exhibit 10j)
23. Call Records 505-309-4299 (exhibit 10k)
24. Call Records 505-309-7759 (exhibit 10l)
25. Master Name Inquiry (exhibit 10m)
26. Curry County Detention (exhibit 10n)
27. Photo Lineup (exhibit 10o)
28. Curry County Detention (exhibit 10n)
29. #1 Value Inn Guest Registration (exhibit 10r)
30. State of New Mexico, Ninth Judicial District, Office of the District Attorney (exhibit 10s)
31. Information from John Garcia to Roger Grah (exhibit 10t)
32. Photo Lineup (exhibit 10u)
33. The University of New Mexico (UNM) Office of The Medical Investigator (exhibit 10v)
34. Index- List of Exhibits

PSYCHOLOGICAL TESTS/PROCEDURES ADMINISTERED

- ⑤ • Structured Clinical Interview
- ④ • Review of List of Exhibits
- ① • Mental Status Exam (MSE)
- ② • Mini Mental Status Exam (MMSE)
- ⑩ • Trail Making Test
- ⑦ • Clock Face
- ⑧ • Portions of The Revised Competence Assessment Instrument

➤ Mental Status Examination: ✓

Behavioral Observations:

Mr. Albert Ramirez is a 19 year-old, single, Hispanic male who was unable to be evaluated due to grossly disorganized behaviors consistent with the positive symptoms associated with a psychotic disorder, including but not limited to: disorganized thinking; rambling, nonsensical speech; paranoia; depersonalization; reports of auditory hallucinations; labile mood; inappropriate affect; loose associations; and poor reality testing. Mr. Ramirez was dressed in the required uniform of the Curry County

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
10:24:46 AM		WHO ELSE DID YOU CALL, HE WAS NOT A FRIEND, I TOLD HIM TO GET THE THING, DO YOU KNOW OF ANYBODY HAS THAT GUN
10:25:33 AM		THERE WAS A GUY IN FRONT OF STORE OF RAGS TO RICHES I BELIEVE HE GOT THE GUN, I JUST HAD SOX AND BOXERS
10:26:34 AM		DID YOU PLAN ON KILLING MR. ROBLEDO "NO"
10:27:11 AM		WERE YOU THERE THAT DAY TO AMBUSH YOUR MOM'S BOYFRIEND "CAN I SPEAK MY MIND", IF I WANTED TO KILL MY MOM OR ROBLEDO, I COULD GO IN THERE AND GO TO MY ROOM AND GET SOMETHING TO EAT. ETC.
10:28:14 AM		WHEN HE TOLD YOU HE WAS GOING TO GET PISTOLA "THAT IS A PISTOL" THAT WAS NOT HIS AMMO IN GARAGE
10:28:59 AM		I KNEW HE HAD A WEAPON, I USED TO SMOKE MARIJUANA I WAS LOOKING FOR MONEY AND I SAW A GUN IN HIS DRAWER
10:29:40 AM		I THOUGHT I WAS IN DANGER
10:29:53 AM		BENCH CONFERENCE
10:30:37 AM	COURT	GONNA TAKE A BREAK
10:31:21 AM		JURY EXCUSED FROM COURTROOM
10:31:36 AM	OFF RECORD	
11:03:22 AM		COURT IN SESSION JURY BEING SEATED IN BOX, DFT AND ALL PARTIES PRESENT
11:03:58 AM	COURT	INSTRUCTS JURORS GOING TO AN EARLY LUNCH BE BACK BY 12:45 P.M.
11:04:37 AM	RECESS	
12:49:46 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES ARE PRESENT
12:50:29 PM	CHANDLER	DFT PUT FORWARD THAT THE VICTIM WAS A FIRST AGRESSOR, ANY TYPE OF SPECIFIC CONDUCT
12:51:31 PM		WHAT TRAIT DO YOU THINK IS DELIBERATE AND WILLFUL MURDER
12:51:52 PM	CHANDLER	RESPONDS, NOW WE HAVE AN OPPORTUNITY THAT OUR VICTIM WAS NOT THE AGRESSOR
12:52:26 PM	COSBY	AS FAR AS THE SITUATION OF THE JAILER, HAD NOTHING TO DO WITH HIS CHARACTER ETC.
12:52:50 PM	CHANDLER	READS RULE 404-A-2 SEC. B
12:54:32 PM	COURT	WILL LET YOU GO AHEAD AND DO IT, BETTER WAY TO DO IT
12:54:50 PM	COSBY	I WILL ASK YOU TO RE VISIT SEXUAL ISSUE
12:55:21 PM	COURT	OBJECTION NOTED
12:55:43 PM	DFT	COMMENTS

10/10/2013

EXHIBIT 415

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home -
all 505-331-7224 *pg 150* *page 1*

MAXANN SHWARTZ, PH.D.
Licensed Psychologist

Exhibit 4.5

3228 Los Arboles Ave. NE
Bldg. A, Suite 230
Albuquerque, New Mexico 87111

New Mexico License 0922
California License PSY15845
Telephone (505) 331-7224

FORENSIC NEUROPSYCHOLOGICAL EVALUATION

(CONFIDENTIAL)

This report is confidential, and unless its release is in accord with the rules of criminal or civil procedure, it should not be released to anyone without written consent of the defendant. While the defendant does have a right to see this report, it is strongly recommended that (s) he do so in the presence of the psychologist so that the findings and results can be properly interpreted and any questions or concerns can be addressed. If the report is given to the defendant by anyone other than a psychologist, it is highly likely that (s) he can misunderstand the report's content, and the information may not necessarily present him/her in a favorable light.

NAME: RAMIREZ, Albert Jose
DOB: [REDACTED] 1988
AGE: 19 years-old
SS#: [REDACTED]
COURT NUMBER: D-905-CR-0200700434
EXAMINER: Maxann Shwartz, Ph.D.
DATE(S) OF EVALUATION: 03/10/2008
DATE OF REPORT: 03/14/2008
REFERRED BY: Brett J. Carter
Counsel for Defense
State of New Mexico/Curry County
Ninth Judicial District

Exhibit 4.5
She would have testified this in court

Ramirez, who was 18 years old when he said he shot Robledo, has a history of mental illness, according to family members, three of whom testified Thursday as defense witnesses.

A psychologist found Ramirez competent to stand trial.

Cosby struggled to keep Ramirez on point through much of his rambling testimony, drawing objections from Chandler and repeated instructions from Hartley to simply answer Cosby's questions.

Ramirez said he purchased the .22 caliber handgun he used in the homicide to protect himself from gang members who had threatened him. He said he had no intention of shooting or killing Robledo.

Ramirez said he went to the home Robledo had lured him out of to get his clothing and electronic gadgets. No one was in the house and his room was padlocked shut, he said, so he went looking for Robledo in the garage behind the house.

Ramirez said he and Robledo got in an argument and Robledo backhanded him across the face.

"I was scared," said Ramirez, his voice quaking. "He (Robledo) spoke in Spanish and said he was going to get his patole."

Ramirez said Robledo then hit him with his fists and started choking him.

"My only option was to shoot. He tried to take the gun (away) and shoot me."

During an hour-long grilling by Chandler on cross examination, Ramirez admitted he gave a stranger \$30 to purchase a \$10 box of bullets for the handgun at the Clevis Walmart the day before the homicide. Chandler also confronted Ramirez with testimony that no bruises were found on his neck when arrested three days later and no bruises were found on the victim's body or hands.

"The fact of the matter," said Chandler, "is it (the fight) didn't happen. He didn't punch you did he?"

"Yes he did," said Ramirez.

Chandler said testimony from previous witnesses was that Ramirez was seen chasing down Robledo after shooting him twice in the chest and the victim fell to the ground.

"Eladio was lying on the ground dying and you shot him in the head," Chandler charged.

"I shot towards the ground," said Ramirez. "I didn't know where I hit him."

A state medical examiner testified earlier that Robledo died of the wounds to his chest and two bullets fired into his right temple.

Ramirez also admitted during Chandler's cross examination that he hit a girl in the face "who was beating up my cousin" and head-butted a police officer in other unrelated violent confrontations.

Hesiquia Ramirez testified her brother "had his own little issues" with mental illness long before the homicide.

During a confrontational cross examination, Chandler challenged her, noting discrepancies in her testimony and what she told police on the day of the killing.

As her brother was taken from the courtroom at the conclusion of the day, Hesiquia waved to Ramirez and said "Love you" in a hushed tune.

The jury is expected to get the case after closing arguments today.

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Filed Under: Featured News, News

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Weekly Web Poll

Do you think non party affiliated voters should be allowed to vote in primary elections?

☐ Yes

☐ No

[Vote](#)

[View Results](#)

CMI PROMOTIONS

Clevis
New Arrival

Military
Discount
Map

A Military Discount Store

Rational Standard for Competency-to-Stand-Trial Assessments, 22 *Journal of Am. Acad. Psychiatry and Law*, 231, 237 (2004). Mr. Ramirez argues, consistent with the article, that two separate evaluators came to different conclusions and that, in light of the problems in Dr. Burness' methodology—not administering neurological or intelligence tests, not reviewing Mr. Ramirez's school records, not contacting the juvenile probation office to find out about any prior psychiatric care or drug use, and meeting with him for only a few hours—this is like “flipping coins in the courtroom.” *Id.*

Because the district court abused its discretion in denying Mr. Ramirez's request for a more thorough competency hearing, this case should be remanded for a new trial with instructions to order another competency evaluation for Mr. Ramirez.

Issue 3: Mr. Ramirez Received Ineffective Assistance Of Counsel.

Mr. Ramirez relies upon his arguments in the brief in chief in support of this issue.

II. CONCLUSION

For the forgoing reasons, the trial court abused its discretion in denying Mr. Ramirez's motion to withdraw plea, and denying his request for a more thorough competency hearing, and the case should accordingly be remanded to the district court for trial, or alternatively, an evidentiary hearing to determine whether the plea

EXHIBIT
3

PAGE 4

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Client Name: <u>Alicia Ray, d3</u>		File #: <u>9393</u>
IV Psychiatric (cont)		
F. SYMPTOMS SCREENING		
Depression	<input checked="" type="checkbox"/> usual depressed mood <input type="checkbox"/> anhedonia <input type="checkbox"/> weight loss <input type="checkbox"/> weight gain <input checked="" type="checkbox"/> sleep disturbance <input type="checkbox"/> psychomotor retardation/agitation <input type="checkbox"/> fatigue <input checked="" type="checkbox"/> worthlessness <input type="checkbox"/> guilt <input checked="" type="checkbox"/> poor concentration <input type="checkbox"/> suicidal ideation <input checked="" type="checkbox"/> hopelessness <input checked="" type="checkbox"/> anxiousness <input type="checkbox"/> decreased energy/motivation <input type="checkbox"/> uncontrollable crying spells	
Anxiety	<input type="checkbox"/> restlessness <input type="checkbox"/> easily fatigued <input type="checkbox"/> poor concentration <input type="checkbox"/> irritability <input type="checkbox"/> muscle tension <input type="checkbox"/> sleep disturbance <input type="checkbox"/> excessive anxiety and worry <input type="checkbox"/> inability to control worry	
Phobia/ Panic	<input type="checkbox"/> abrupt development of panic attacks accompanied by palpitations: <input type="checkbox"/> sweating <input type="checkbox"/> trembling <input type="checkbox"/> shortness of breath <input type="checkbox"/> feeling of choking <input type="checkbox"/> chest pain <input type="checkbox"/> nausea <input type="checkbox"/> dizziness <input type="checkbox"/> light headedness <input type="checkbox"/> derealization <input type="checkbox"/> fear of losing control <input type="checkbox"/> fear of dying <input type="checkbox"/> numbness <input type="checkbox"/> chills <input type="checkbox"/> hot flashes <input type="checkbox"/> agoraphobia <input type="checkbox"/> excess/persistent fear of stimuli avoidance	
Mania	<input type="checkbox"/> grandiosity <input checked="" type="checkbox"/> decreased sleep <input checked="" type="checkbox"/> talkativeness <input checked="" type="checkbox"/> flight of ideas <input checked="" type="checkbox"/> distractibility <input type="checkbox"/> increased goal directed activity <input type="checkbox"/> increased anxiety/agitation <input checked="" type="checkbox"/> elevated/expansive <input checked="" type="checkbox"/> irritable mood <input checked="" type="checkbox"/> pressured speech <input checked="" type="checkbox"/> psychosis <input type="checkbox"/> increased compulsive/addictive behavior	
Post traumatic stress	<input type="checkbox"/> experienced traumatic event (event _____ date _____) <input type="checkbox"/> re-experiencing trauma avoidance of stimuli associated with trauma <input type="checkbox"/> increased physical/emotional arousal dissociative symptoms <input type="checkbox"/> amnesia	
Psychosis	<input checked="" type="checkbox"/> hallucinations <input checked="" type="checkbox"/> delusions <input checked="" type="checkbox"/> paranoia <input checked="" type="checkbox"/> disorganized speech <input type="checkbox"/> bizarre/catatonic behavior <input checked="" type="checkbox"/> flat or inappropriate affect	
Organicity	<input type="checkbox"/> decreased consciousness <input type="checkbox"/> impaired memory <input type="checkbox"/> perceptual disturbance <input type="checkbox"/> impaired intellectual functioning <input type="checkbox"/> impaired judgement <input type="checkbox"/> labile affect	
Impulse Control	<input type="checkbox"/> property destruction <input type="checkbox"/> explosive/assaultive behavior <input type="checkbox"/> inability to control destructive impulses <input type="checkbox"/> pleasure gained from acting out <input type="checkbox"/> gambling <input type="checkbox"/> kleptomania <input type="checkbox"/> pyromania <input type="checkbox"/> trichotillomania	
Substance Abuse	<input checked="" type="checkbox"/> failure to fulfill major role obligations <input checked="" type="checkbox"/> physically hazardous use <input checked="" type="checkbox"/> legal problems <input checked="" type="checkbox"/> use in spite of negative psychosocial consequences	
Substance Dependence	<input type="checkbox"/> tolerance <input type="checkbox"/> withdrawal <input checked="" type="checkbox"/> using more than intended <input type="checkbox"/> unsuccessful efforts to quit <input checked="" type="checkbox"/> increased time spent obtaining/recovering <input checked="" type="checkbox"/> reduction in psychosocial functioning <input checked="" type="checkbox"/> continued use in despite negative consequences	
Attention Deficit Symptoms	<input type="checkbox"/> inattention <input type="checkbox"/> hyperactivity <input type="checkbox"/> impulsivity functional impairment at	
Anti-Social Conduct	<input type="checkbox"/> aggressive behavior toward people/ animals <input type="checkbox"/> stealing <input type="checkbox"/> lying <input type="checkbox"/> vandalism <input type="checkbox"/> violating rules at school/home/community	
Oppositional Conduct	<input type="checkbox"/> losing temper arguing <input type="checkbox"/> defiance annoying others <input type="checkbox"/> blaming others <input type="checkbox"/> denying problems <input type="checkbox"/> easily agitated angry/resentful <input type="checkbox"/> spiteful/vindictive	
Other Symptomology	<input checked="" type="checkbox"/> frustration <input checked="" type="checkbox"/> mood lability <input type="checkbox"/> running away <input type="checkbox"/> separation anxiety <input type="checkbox"/> developmental delay <input type="checkbox"/> learning difficulties <input type="checkbox"/> adjustment issues <input type="checkbox"/> below average IQ <input type="checkbox"/> autism <input type="checkbox"/> verbal/motor tics <input type="checkbox"/> encopresis <input type="checkbox"/> enuresis <input type="checkbox"/> neurological deficits <input type="checkbox"/> school problems <input checked="" type="checkbox"/> maladaptive family issues <input checked="" type="checkbox"/> low self esteem <input type="checkbox"/> peer relationship issues <input type="checkbox"/> gang involvement <input type="checkbox"/> blended family issues <input type="checkbox"/> truancy <input type="checkbox"/> sexual promiscuity <input type="checkbox"/> sexual identity <input type="checkbox"/> somatization <input type="checkbox"/> conversion <input type="checkbox"/> hypochondria <input type="checkbox"/> producing physical symptoms <input type="checkbox"/> malingering <input type="checkbox"/> intrusive obsessions/compulsions <input type="checkbox"/> pathogenic personality <input type="checkbox"/> sexual dysfunction <input type="checkbox"/> paraphilia dyssomnias <input type="checkbox"/> self mutilation <input type="checkbox"/> dissociative states <input type="checkbox"/> bereavement <input type="checkbox"/> recent physical injury <input type="checkbox"/> chronic illness <input type="checkbox"/> anorexic bulimic behaviors	

EXHIBIT 3

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MENTAL HEALTH RESOURCES, INC. **OUTPATIENT CLINICAL ASSESSMENT**

* Please note: clinical assessment must be completed within 30 days of admission

Initial ☒ Annual update 1st year ☐ 2nd year ☐ year ☐ Client ID # 4393 Completion Date 11/8/11

I. PATIENT INFORMATION

Client Name: (Last) Ramirez First Adolfo MI. ☐ Male: ☐ Female: ☐

Client's primary residence

☐ Their Home (house, apartment, room) ☐ Friend's home ☐ Relative's home ☐ Group home ☐ Foster Care
☐ Jail ☐ Nursing home ☐ Assisted Living ☐ Shelter ☐ Currently Homeless ☐ Other

Phone: Address: City: MOBILE State: AL Zip: 36611

Client Age: 19 DOB: Soc. Sec: Marital Status: ☐ Mar ☒ Sin ☐ Div ☐ Wid. ☐ Sep ☐ Other

Race: ☒ White ☐ Native Am. ☐ Black/African ☐ Hispanic ☐ Mexican ☐ Cuban ☐ Puerto Rican ☐
☐ Am Asian ☐ Pacific Islander ☐ Alaska Native Latino ☐ Not Hispanic Origin ☐ Mexican Am. ☐ Central Am ☐ South Am.

Parent/Guardian/Custodian/Power of Attorney if Minor (include name & address) Parent/Guardian/Custodian Phone

NONE () N/A

Emergency Contact (include name & address) Relationship to the Client. Emergency Contact Phone

Isis Maria Ramirez 220 Chaparral Sister (505) 742-7916

Referral Source (please give specific name): Self Household Annual Income 0 Client Annual Income 0 Household income source: 0 Client income source: ✓

Employer's Name: N/A Phone: N/A School: N/A Ed Level: 12

Current PCP: N/A Address: N/A Phone: N/A

Please give a brief description of the presenting problem, including source of distress, precipitating events associated problems and symptoms: Client feeling sad, mad, exp. psychosis, mood lability

Le problems: ☐ No ☒ Yes Explain: currently facing charge of murder

If the client is a minor please describe the following in relation to Psychosocial/Developmental history: N/A

Psychological functioning:

Intellectual functioning:

Educational/vocational functioning:

Social functioning:

Developmental functioning:

Substance abuse:

Culture:

Leisure and recreation:

II. RISK ASSESSMENT

A. ☒ No current risk at the time of this assessment

B. Have you ever thought about harming yourself or someone else? ☒ No ☒ Yes, if yes, did you have a plan? ☒ No ☐ Yes

When was the last time you thought about harming yourself or someone else? November 1, 2007

C. Have you ever harmed/injured yourself or someone else intentionally? ☒ No ☐ Yes, if yes, did you have a plan? ☒ No

☐ Yes When was the last time you thought about harming yourself or someone else?

ONLY complete the rest of the risk assessment questions, if the response to section B or C is yes

(note: complete section D if the risk is harm to self and/or section E if the risk is harm to others)

D. Risk of harm to Self: Indicate which of the following suicide (harm to self) risk factors apply to the person:

Prior suicide attempt: ☒ No ☐ Yes Behavioral cues (isolation, impulsivity, withdrawn etc): ☒ No ☐ Yes

Repeated attempts: ☒ No ☐ Yes Symptoms of psychosis (command hallucinations): ☐ No ☒ Yes

Stated plan with intent: ☒ No ☐ Yes Family history of suicide: ☒ No ☐ Yes

Access to means (e.g., weapon): ☒ No ☐ Yes History of suicide in friend: ☒ No ☐ Yes

Substance use: ☒ No ☐ Yes Terminal physical illness: ☒ No ☐ Yes

Other self-injurious behaviors: ☒ No ☐ Yes Current stressors: ☐ No ☒ Yes

Recent losses/ lack of support: ☐ No ☒ Yes Others: ☒ No ☐ Yes

Please provide explanation(s) for any of the above risk factors that were indicated with a yes response. Client denied

SE/HIT but denied to go on 11/1/07 waiting on the back street to wait

EXHIBIT 3

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Projected Date of Discharge: Within approximately 9 months.

Patient's Level of Participation in the Plan: At this time, Mr. Ramirez seems to willing to cooperate with his treatment plan.

Family/Support System Input/Desires: Evaluation is ongoing.

Legal Considerations Which May Impact Treatment: Mr. Ramirez has criminal charges pending. He is here on a court order for treatment to attain competency.

Least Constrictive Conditions for Treatment: Mr. Ramirez was ordered by the court to remain in a secure locked facility during the time of his evaluation and course of treatment.

Criteria for Transfer to a Less Restrictive Setting: As per court order.

Discharge Criteria: As per court order.

Potential Barriers to Discharge and Strategies to Overcome Them: Evaluation is ongoing.

Recommended Follow-up Treatment, Living, Skill, and Support Requirements: To be reassessed at the time of discharge.

Anticipated Length of Stay: Approximately 9 months.

Discharge Plan: As per court order.

Yvonne J. LBSW
CHRIS S. MANZANARES, LBSW
Staff Social Worker

Date:

6/16/08

CSM/AHS-644
D: 06/16/2008 1819
T: 06/16/2008 2356
J: 532576

EXHIBIT 3

June 16, 2008
FTUD

EXHIBIT 3

RAMIREZ, ALBERT
MR: 42819

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Defense counsel argued at the hearing that the doctor didn't administer neurological or intelligence tests, didn't review Mr. Ramirez's school records, didn't contact the juvenile probation office to find out about any prior psychiatric care or drug use, and only met with him for five or six hours. [CD 9/15/08 2:24:15, 2:31:15, 2:41:00]. Counsel maintained his belief that Mr. Ramirez was unable to assist in his defense and requested that Mr. Ramirez be sent back to Las Vegas for a more thorough competency evaluation, for his medications to stabilize, and to be administered neurological tests. [CD 9/15/08 2:41:00]. The district court denied Mr. Ramirez's request for another competency evaluation and declared him competent to stand trial. [RP 158-59].

Trial on the first degree murder and tampering with evidence charges was set for January 26, 2009. [CD 1/26/09 8:56:00]. That morning, the parties conducted jury selection. [CD 1/26/09 9:07:30-12:05:00]. During a break, the parties discussed a plea offer that had been previously made and were able to come to an agreement. [CD 1/26/09 3:03:15]. Pursuant to the agreement, Mr. Ramirez pled guilty to first degree murder and stipulated to a life sentence. [RP 300-302]. Prior to trial, Mr. Ramirez was also charged in separate cases with two counts of battery upon a detention officer and one count of assault. [RP 300-01, 333]. Under the plea, the two tampering with evidence charges were dismissed, as well as one of the battery charges, but he pled guilty to assault and battery against a detention

Incident 07-0003238 Rt# 0001
FDID# 09013

Clovis Fire Department

Alarm Date 07/12/2007

Disposition

Exhibit 2

Transported to 9 PMHC/Clovis

Dest Determined by 06 Protocol

Mr 1 Transport 1 Ground

Diverted To

1 by Treated With

Patient Disposition 01 Treated, Transported by EMS

Lights/Siren from Scene? Emergent, with lights or siren

False on Transfer 2 No

Insurance

Type	Policy #	Group #	Insured Name
------	----------	---------	--------------

Patient Narrative

Ambulance 1 arrived at 512 West 5th with a report of a subject on the ground. Ambulance 3, Bill Baca and myself arrived at the same time. Patient was lying with his head to the north on his left side in a pool of blood. Patient was placed on a LBS board, placed on the stretcher and taken to the ambulance where IV's, O2 and intubation was being prepared.

EMS Personnel was asked to gown up and get ready to transport code 3. K Suras prepared to intubate the patient. Ben Black was assisting with airway procedures, Chris Elam, Mike Nolen and J. Boyd, worked on IV's, Bill Baca was hooking up the monitor, and spiking IV fluids for the lines that were being attempted. John Bradley was handing personnel equipment that requested additional supplies. Suction was prepared by Bill Baca since the patients airway was full of blood. In trying to suction it was noted that we would get a tremendous amount of coagulated blood and mucous. Suction was not effective or were we able to get a clear site of the vocal cords. A Combi Tube was placed and lung sound were diminished on both sides when bagged with 100% O2.

The initial pulse was weak at the carotid, with blood and mucous streaming out the patient's mouth and nose. Once airway was established we felt for a pulse to find no pulse, but had an organized rhythm on the monitor. PEA was identified and the ACLS protocol was initiated as we arrived at PMHC. CPR was started, and bagging with 100% O2 was continued. We arrived at PMHC with patient moving the patient from the ambulance into C-2 where personnel stayed and helped staff with patient care.

It was noted that the patient was shot twice in the head, once in the chest, once in the abdomen, and once in the arm. Patient was never revived at PMHC and pronounced dead at 1409 by Dr. Patterson.

D - DISPATCHED:

On 07/12/2007 at 13:41:00 dispatched to 515 W 5TH ST /Clovis, NM 88101 for Shots Fired. 13:42:00 unit 24 en route.

C - CHIEF COMPLAINT:

13:43:00 unit 24 arrived to find a 39 year-old male with a weight of 79.4kg./175lbs. patient complaining of Gun Shot to Patient.

M - HISTORY:

A - ASSESSMENT:

Was found Traumatic Injury during assessment.

Patient's sign and symptoms are:

Rales
Crepitus
Hemorrhage
Contusion

Look AT THIS
175 pounds

R - TREATMENT:

The following medications, treatments, and vitals were performed on the patients:

Time: 13:44:00 Blood Pressure: 0/0 Palp Temperature: Not Assessed G Eye: 1

G Verbal: 1 Gcs Total: 3 Notes: Patient was lying in a pool of

EXHIBIT

2

EXHIBIT

ROBLEDO, ELADIO 2007-03764		AUTOPSY REPORT THE UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER OFFICE OF THE MEDICAL INVESTIGATOR <hr/> School of Medicine Albuquerque, New Mexico 87131-5091	1
-------------------------------	---	--	---

POSTMORTEM EXAMINATION

An autopsy is performed on the body of Eladio Robledo at the Office of the Medical Investigator, State of New Mexico, on the 13th day of July 2007, commencing at 10:00 AM.

The examination is performed under the legal authority of the Office of the Medical Investigator of the State of New Mexico.

The body is received within a sealed body bag, with a "State of New Mexico, Office of the Chief Medical Investigator" evidence label, bearing the following printed and handwritten information: "Name of Deceased: Robledo, Eladio; Sealed by: 6.37; Date: 7-12-07".

145.0K

EXTERNAL EXAMINATION

The body is that of a well developed, well nourished, adult, Hispanic male who weighs 145 pounds, is 72 inches in length, and appears compatible with the reported age of 39 years. There are pink and green OMI identification bands around the right wrist inscribed with identifying information.

The body is received clad in a pair of white brief-style underpants, which are partially cut off the body for resuscitation. There are no accompanying personal effects.

The body is cool. Rigor mortis is fully fixed. Minimally evident, blanchable purple livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure.

The scalp hair is black, wavy, and measures up to 2 inches in length over the crown. The irides are brown. The pupils are round. The corneae are translucent. The sclerae are white and the conjunctivae are clear. No petechial hemorrhages are identified on the sclerae, bulbar conjunctivae, facial skin or oral mucosa. The nose and ears are normally formed, without pierce marks. The decedent wears trimmed mustache and beard stubble. The teeth are natural and in good condition. The neck is unremarkable.

The thorax is well developed and symmetrical. The abdomen is flat. The anus is free of lesions. The spine is normally formed and the surface of the back is free of lesions.

The external genitalia are those of a normal adult male.

The upper and lower extremities are well developed and symmetrical, without absence of digits.

No identifying marks or scars are readily apparent.

Evidence of medical intervention includes an orotracheal tube (correctly placed), seven electrocardiograph patches and two defibrillator pads over the anterior chest, a right antecubital intravenous line, a left antecubital intravenous line,

8 The man who sex and abused my mom Exhibit 2

Page 8

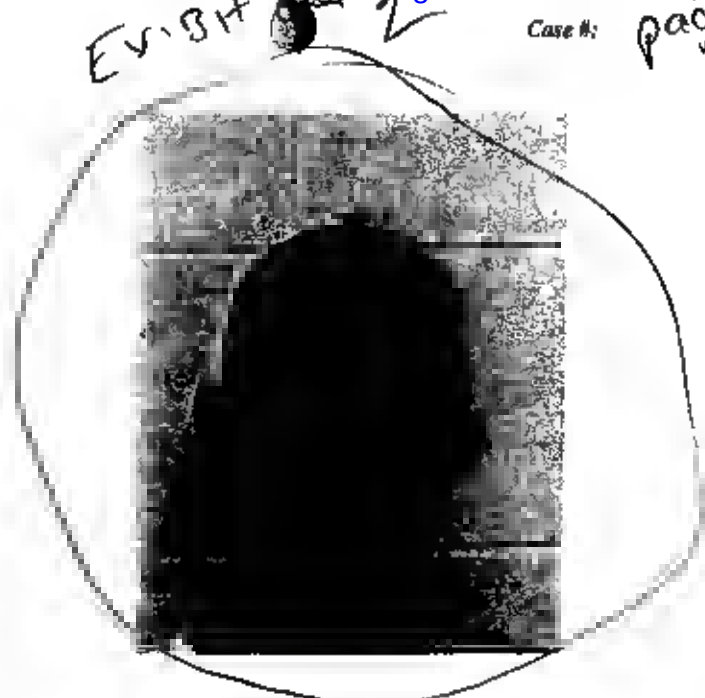
Booking Report #: 1025645
Booking Date/Time: 06/20/07 19:11
Name: RAMIREZ,ALBERT
DOB: [REDACTED]
Address: 1201 EDWARDS ST
City: CLOVIS,NM 88101
Phone:

Physical Info

Age: 18
Race: W
Sex: M
Ethnic:
Height: 5'05"
Weight: 100
Hair: BLK
Eyes: BRO
Skin:
Facial:

Other Info

JRN: 47315
FBI:
MID:
SID: NOT REQUIR
Mug #: 47315.JPG
SSN: [REDACTED]
Immigh:
Fingerprint:
OLN: NONE
OLN State:



POB: CLOVIS NM
School: CHOICES HIGH
Grade: 12 **Stat:** DROP OUT **GED:** N **APS:**
Dangerous: 2 **Hate/Bias:** NONE
Gang: NONE
Gang Moniker:
Scars / Tattoos: NONE
Employer:

Religion: NONE

			Date	Time
Custody Officer	120	- MARTINEZ,S		
Wing Officer	120	- MARTINEZ,S	06/20/07	18:15
Spot Officer	120	- MARTINEZ,S		
Probation Officer	-	-		
Admining Officer	D33	- CARVEY,T		
Fingerprint Officer	D30	- MARQUEZ,D		
Detain Auth Officer	A46	- LOZANO,M	06/20/07	19:11
Release Auth Officer	1	- MAG COURT		00:00
Release Officer	-	-		00:00
Release Type:		Release To:		
Detainer 1:				
2:				

Billing Agency # CPD CLOVIS PD
Custody Agency # CPD - CLOVIS PD
Housing Facility CUIRY CTNY ADC
Arrest Location 300 N CONNELLY
Offense Location

Class: DETOX
Points: 2
Reason: DETOX

ACTIVE: Y **Work Release:** N **Community Service:** N **Interpreter:**

Attorney:

Comments:

CHARGES/COURT INFORMATION

IBR #	NCIC #	Violation	Statute	Disposition	Date	Bond Amt/Type	Warrant #	Sentence
-------	--------	-----------	---------	-------------	------	---------------	-----------	----------

290	041	CRIMINAL DAMAGE	30-15-1	MISD	06/20/07	1000.00 C	M12MR200700472	MAGISTRATE
-----	-----	-----------------	---------	------	----------	-----------	----------------	------------

ME the SEX Abusad
 Victim.

page 7

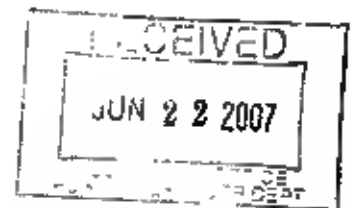


EXHIBIT 2

EXHIBIT 2

Sam Saiz

CSP or statutory rape

90's -

DA → Cosmo Ripa
Judge Hensley

DOB:

SS#

3022

89-CR-10173

96-CR-12536 - OLDT 3RD

THE minor
who set
Abused
me at 15. +16.
gay guy

EXHIBIT 2

page 6

Ex-Bit 1

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:14:36 PM	COURT	HE HAS BECOME EXPLOSIVE AND SHOOTS OFF HIS MOUTH, GO TALK TO HIM AND SEE WHAT WE WILL DO, WE ARE CLOSE TO THE END
2:15:25 PM	RECESS	
2:36:30 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
2:37:06 PM	COSBY	HAVE DISCUSSED WITH MY CLIENT HIS OPTIONS HE HAS STATED HE FEELS HE NEEDS ME, I TOLD HIM EITHER I REPRESENT HIM OR HE REPRESENTS HIMSELF, I CAUTIONED HIM HE NEEDS TO OBEY COURT RULES, HE SAID HE WOULD RATHER HAVE SOMEONE ELSE BUT HE NEEDS ME, I EXPLAINED TO HIM AS FAR AS THE LAST WITNESS, THE WITNESS TELLS ME HE DOES NOT REMEMBER IN FRONT OF THE JURY, SO RATHER THAN CALL SOMEONE TO STAND THEY DON'T REMEMBER I JUST DON'T ASK THAT QUESTION, THERE ARE QUESTIONS THAT ARE NOT ASKED FOR REASONS
2:39:17 PM	COURT	LET THE RECORD REFLECT THAT MR. RAMIREZ HAS RETURNED TO THE COURTROOM AND MR. COSBY WILL BE CONTINUING HIS REPRESENTATION, NOT ANOTHER OPPORTUNITY TO CHANGE COUNSEL
2:39:55 PM		ADVISES DFT THAT THERE IS AUTHORITY THAT ALLOW YOU TO SIT IN ANOTHER ROOM TO WATCH TRIAL, IT IS AN OPTION IF YOU CONTINUE TO BE DISRUPTIVE YOU WILL SIT IN ANOTHER ROOM AND VIEW TRIAL BY VIDEO
2:40:48 PM	COSBY	HE ASKED ME IF IT WAS BETTER TO SIT IN ANOTHER ROOM, I TOLD HIM IT WOULD BE AGAINST HIS INTEREST TO VIEW BY VIDEO
2:41:36 PM	CHANDLER	I DON'T HAVE ANY XEX FOR MR. RAMIREZ BROTHER OF DFT
2:42:28 PM	COSBY	I HAVE TOLD HER WHAT SHE CAN SAY AND CANNOT SAY
2:42:40 PM		BENCH CONFERENCE
2:44:43 PM	COSBY	REGARDING PHOTO OF IVAN VASQUEZ SHOWING PHOTO OF HIM IN BOOKING, AND RECEIVED THIS LETTER
2:46:00 PM	CHANDLER	RELEVANCE TO THE PICTURE, COURT WILL NOT ALLOW PHOTO
2:47:19 PM		JURY BEING BROUGHT INTO COURTROOM
2:48:04 PM		OFF RECORD
2:51:51 PM		#3 WITNESS HESQUIA RAMIREZ CALLED BY COSBY / SWORN / DEX
2:52:03 PM		JURY BEING SEATED IN BOX
2:53:09 PM	CHANDLER	MR. JOSE RAMIREZ, THE STATE DOES NOT HAVE ANY QUESTIONS

Why was F 2nd to speak

Red Xif

page 5

10/10/2013

Ex-Bit 1

12 of 16 page 5

Following the finding of competency and after nearly two years of silence, Defendant became an active participant in the process. At a July 29, 2013, status conference, he addressed the court regarding the letters he had written stating he wanted new counsel because Mr. Cosby had not fulfilled his duties and he was confused because Mr. Cosby was not telling him what was happening. [CD-29]

Ultimately, Defendant's case did not go to trial until October 7, 2013. The first day of trial, the jury heard testimony from Mr. Saiz, Ms. Finkey and a crime scene investigator. The second day of trial, after the trial court released the jury for the day, the prosecutor emphasized its first two witnesses the next day needed to

Page 3

EXIBIT 1

"Mr. Cosby is my attorney and he's supposed to be for my defense but like I've said in the past I've asked to fire him, I've asked to get a new attorney which I can't afford it I'm poor, I have no help from my family just basically to get my hygiene and also I asked for a new attorney, I asked for a private investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I've asked for several motions which I don't know if they were even filed or if they were denied, I don't know if Mr. Cosby, I just feel like maybe I have a big mouth and I sit to open my big mouth and say things and I don't know if I made him angry or upset or frustrated or what I've done but for some reason I don't know if he's going to lose this case because it's a weak case or if it's intentionally or accidental or if I'm just paranoid."

But they can't
But all they
want to
convict me
proper record

The judge interrupted and told Mr. Ramirez that he had made his record. Mr. Ramirez told the judge that he had more things to say, but thanked the judge for giving him that time. [10-10-2013 CD B 9:22:00-9:26:00]

Testimony of Albert Ramirez

Mr. Ramirez took the stand. His entire testimony was punctuated with run-on and irrelevant statements as well as admonitions from his counsel and the judge. He repeatedly kept raising issues of his health and health history. He stated that he had the flu and didn't feel well. When asked about his height he talked about getting into an accident while driving a car and starting to lift weights, and he was taller in 2007. Shortly thereafter, when defense counsel tried to get Mr. Ramirez to answer who his mother was, Mr. Ramirez objected, "You didn't let me finish where I stayed in July." Mr.

was sent
able to

EXIBIT 1

Page 2

Exhibit 1

The judge interrupted and asked the prosecution to lay a foundation. The prosecution asked Mr. Ramirez "Do you recall giving a lot of requests to go to the law library to research how to beat your charges?" The defense objected and asked to approach. The judge directed the prosecution not to ask those questions but said that he would not declare a mistrial. [10-10-13 CD B 1:56:15-1:58:25]

Later on October 10th, when Mr. Ramirez's defense counsel was finished questioning Mr. Ramirez's brother on direct examination, Mr. Ramirez interrupted the proceedings:

Mr. Ramirez: "Hey, your Honor, I got some questions I need to ask him."

Judge: "But you can't ask them."

Mr. Ramirez: "Why didn't you ask... I want to fire..."

Judge: "We're going to sit you in the other room if I hear anything more from you."

Mr. Ramirez: (speaking over the judge) "I fire him. He's fired. I want to represent myself... I have the right to fire him and represent myself! He's not representing me right!"

The Judge ordered Mr. Ramirez from the courtroom and excused the jury. [10-10-2013 CD B 2:09:45-2:10:30] Following the recess defense counsel spoke with Mr. Ramirez and the trial resumed with Mr. Ramirez present.

Exhibit 1

page 2



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 24, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case. Also, be advised that we have copied your discovery and will be sending it back to you. It will be in 2 parts.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,


Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

Xc: file

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED IN 187

410 JAN 19 PM 3:37

ALBERTO RAMIREZ,

Petitioner,

vs.

Shelly B. Boyd
D-905-CR-2007-00434

STATE OF NEW MEXICO,

Respondents.

SECOND STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED:

Amanda Stephenson
Amanda Stephenson
Counsel for Petitioner

Drew Tatum
Drew Tatum
DISTRICT JUDGE

Approved via email 1/16/18
Andrea Reeb
District Attorney

Form CD-150301 1
Revised 06/09/16

NEW MEXICO CORRECTIONS DEPARTMENT

Attorney Telephone Call RequestInmate Name: ALBERT RAMIREZ NMCD #: 64547HU/Cell/Bunk #: 58F107 Date of Request: 5/21/18Attorney to be called: LIANE KERR / SECRETARY. SCHEDULE APPOINTMENTAttorney telephone #: (505) 848-9190

I understand that if the attorney listed above does not accept collect calls, I will be charged \$0.20 per minute (long distance only), to be deducted from my inmate account through a Debit Memo authorized by my signature. A.R.

Inmate's Signature: ALBERTO RAMIREZ
Inmate Initials

Classification Officer: Bluna IB Bluna 5-22-18
(Print) (Sign) Date

Call was: **APPROVED** (X) **DENIED** () Schedule/visit on 5/22/18 @ 58 - she will call me back regarding scheduling once she speaks w/ attorney.

Full explanation if denied: _____

(A copy of all denied attorney calls shall be forwarded to the Deputy Warden for review.)

If call was approved but not placed or accepted by the attorney, please explain in detail: _____

Call placed: 5-22-18 12:10 12:28 5B Class Dfr.
Date Start Time End Time Location

Staff member placing call: Bluna IB Bluna
(Print) (Sign)

STAFF MEMBERS, CUSTODY AND NON-CUSTODY, MAY NOT REMAIN IN THE OFFICE AREA WHEN AN ATTORNEY PHONE CALL IS PLACED. THIS DOES NOT PRECLUDE VISUAL OBSERVATION BY DEPARTMENT STAFF MEMBERS DURING THE TELEPHONE CALL. ATTORNEY PHONE CALLS SHALL NOT ARBITRARILY OR UNREASONABLY BE LIMITED TO 15 MINUTES UNLESS JUSTIFIED.

Attorney call was approximately 18 minutes, due to Call Concluded
(If limited to 15 minutes or less, state the reason)

I verify that my Attorney phone call was handled as documented above:

Inmate Signature: ALBERTO RAMIREZ Date: 5/22/18 Time: 12:28

Form CD-150301 I
Revised 06/09/16NEW MEXICO CORRECTIONS DEPARTMENT
Attorney Telephone Call Request

Inmate Name: ALBERT RAMIREZ NMCD #: 69597
 HU/Cell/Bunk #: SBE 107 Date of Request: 3/27/18
 Attorney to be called: Brian Tucker, Supervising Attorney
 Attorney telephone #: (505) 369-3611 Post conviction Review

I understand that if the attorney listed above does not accept collect calls, I will be charged \$0.20 per minute (long distance only), to be deducted from my inmate account through a Debit Memo authorized by my signature. AR

Inmate's Signature: ALBERT RAMIREZ Inmate Initials

Classification Officer: B Luna B Luna 4-4-18 rev'd
 (Print) (Sign) Date

Call was: APPROVED (✓) DENIED () 4-9-18 - 1:25pm spoke w/ Atty Tucker - w/ H call back to scheduled thru computer was down
 Full explanation if denied: 4/9/18 @ 1:52 - Scheduled for 4-25-18 @ 10:30am

(A copy of all denied attorney calls shall be forwarded to the Deputy Warden for review.)

If call was approved but not placed or accepted by the attorney, please explain in detail: _____

Call placed: 4-25-18 10:35 10:52 SB Mass 108
 Date Start Time End Time Location

Staff member placing call: B Luna B Luna
 (Print) (Sign)

STAFF MEMBERS, CUSTODY AND NON-CUSTODY, MAY NOT REMAIN IN THE OFFICE AREA WHEN AN ATTORNEY PHONE CALL IS PLACED. THIS DOES NOT PRECLUDE VISUAL OBSERVATION BY DEPARTMENT STAFF MEMBERS DURING THE TELEPHONE CALL. ATTORNEY PHONE CALLS SHALL NOT ARBITRARILY OR UNREASONABLY BE LIMITED TO 15 MINUTES UNLESS JUSTIFIED.

Attorney call was approximately 17 minutes, due to Call Concluded.
 (If limited to 15 minutes or less, state the reason)

I verify that my Attorney phone call was handled as documented above:

Inmate Signature: ALBERT RAMIREZ Date: 4/25/18 Time: 10:52

Form CD 150301.1
Revised 06/09/16NEW MEXICO CORRECTIONS DEPARTMENT
Attorney Telephone Call Request

Inmate Name: AIBERT RAMIREZ NMCD# 64597
 HU/Cell Bunk # SBF167 Date of Request 3/21/18
 Attorney to be called Liana KERR
 Attorney telephone # (AP) AIBERT RAMIREZ 505 8459190

I understand that if the attorney listed above does not accept collect calls, I will be charged \$0.20 per minute (long distance only), to be deducted from my inmate account through a Debit Memo authorized by my signature. AR

Inmate's Signature: AIBERT RAMIREZ

Classification Officer B Luna B Luna 3-9-18
 (Print) (Sign) Date @ 8:20am

Call was APPROVED (✓) DENIED Spoke w/ Yareli - dates: 4 hrs
prova, she will get back w/ me
 Full explanation if denied: Scheduled 3/12/18 @ 2:30p Yareli called
on 3/12/18 @ 11:4

(A copy of all denied attorney calls shall be forwarded to the Deputy Warden for review.)

If call was approved but not placed or accepted by the attorney, please explain in detail: _____

Call placed: 3-12-18 2:43 3:09 SB Class Office
 Date Start Time End Time Location
 Staff member placing call B Luna B Luna Atty Carlos In
 (Print) (Sign)

STAFF MEMBERS, CUSTODY AND NON-CUSTODY, MAY NOT REMAIN IN THE OFFICE AREA WHEN AN ATTORNEY PHONE CALL IS PLACED. THIS DOES NOT PRECLUDE VISUAL OBSERVATION BY DEPARTMENT STAFF MEMBERS DURING THE TELEPHONE CALL. ATTORNEY PHONE CALLS SHALL NOT ARBITRARILY OR UNREASONABLY BE LIMITED TO 15 MINUTES UNLESS JUSTIFIED

Attorney call was approximately 24 minutes, due to Call concluded
 (If limited to 15 minutes or less, state the reason)

I verify that my Attorney phone call was handled as documented above:

Inmate Signature: AIBERT RAMIREZ Date: 3-12-18 Time: 2:00 PM

Form CD-150301 I
Revised 06/09/16NEW MEXICO CORRECTIONS DEPARTMENT
Attorney Telephone Call RequestInmate Name: Alberto Ramirez NMCD #: 109597HU/Cell/Bunk #: 5B-F107 Date of Request: 3-2-18Attorney to be called: Leanne Kerr (Contract City)Attorney telephone #: (505) 848-9190I understand that if the attorney listed above does not accept collect calls, I will be charged \$0.20 per minute (long distance only), to be deducted from my inmate account through a Debit Memo authorized by my signature. AVInmate's Signature: Albert Ramirez ^{Inmate Initials}Classification Officer: B Luna I.B. Luna 3-2-18
(Print) (Sign) DateCall was: **APPROVED** (✓) **DENIED** () Left VM 3/2/18 @ 2:40 pm
Scheduled 3/9/18 @ 2:15 pm
Sec'd w/ Paralel

Full explanation if denied: _____

(A copy of all denied attorney calls shall be forwarded to the Deputy Warden for review.)

If call was approved but not placed or accepted by the attorney, please explain in detail: _____

Call placed: 3-9-18 8:19 am 8:29 5B Class Office
Date Start Time End Time LocationStaff member placing call: B Luna Atty Called In
(Print) (Sign)

STAFF MEMBERS, CUSTODY AND NON-CUSTODY, MAY NOT REMAIN IN THE OFFICE AREA WHEN AN ATTORNEY PHONE CALL IS PLACED. THIS DOES NOT PRECLUDE VISUAL OBSERVATION BY DEPARTMENT STAFF MEMBERS DURING THE TELEPHONE CALL. ATTORNEY PHONE CALLS SHALL NOT ARBITRARILY OR UNREASONABLY BE LIMITED TO 15 MINUTES UNLESS JUSTIFIED.

Attorney call was approximately 10 minutes, due to Call Concluded
(If limited to 15 minutes or less, state the reason)

I verify that my Attorney phone call was handled as documented above:

Inmate Signature: ALBERT RAMIREZ Date: 3/2/18 Time: 8:29

Form CD-150301.1
Revised 08/21/13NEW MEXICO CORRECTIONS DEPARTMENT
Attorney Telephone Call RequestInmate Name: ALBERT ROMERO NMCD # 69597HU/Cell/Bunk #: 1B4-112 A107 Date of Request: _____Attorney to be called: Amanda StephensonAttorney telephone #: 505-369-3612 Tanya Asst. 505-369-3661I understand that if the attorney listed above does not accept collect calls, I will be charged \$0.20 per minute (long distance only), to be deducted from my inmate account through a Debit Memo authorized by my signature. AKInmate's Signature: ALBERT ROMERO
Inmate InitialsClassification Officer: Blum Blum 2-26-18 - recd
(Print) (Sign) DateCall was: APPROVED () DENIED (✓) Left VM on 2-27-18 @ 1:16 pm
Left VM on 3-1-18 @ 8:57 am

Full explanation if denied: _____

Ms Stephenson returned call on 3-2-18 @ 11:13 - she no longer represents
Inmate Romero. Contact Abby Leann here 505-848-9190 has taken over case.
(A copy of all denied attorney calls shall be forwarded to the Deputy Warden for review.)

If call was approved but not placed or accepted by the attorney, please explain in detail: _____

Call placed: _____
Date Start Time End Time LocationStaff member placing call. _____
(Print) (Sign)

STAFF MEMBERS, CUSTODY AND NON-CUSTODY, MAY NOT REMAIN IN THE OFFICE AREA WHEN AN ATTORNEY PHONE CALL IS PLACED. THIS DOES NOT PRECLUDE VISUAL OBSERVATION BY DEPARTMENT STAFF MEMBERS DURING THE TELEPHONE CALL. ATTORNEY PHONE CALLS SHALL NOT ARBITRARILY OR UNREASONABLY BE LIMITED TO 15 MINUTES UNLESS JUSTIFIED.

Attorney call was approximately _____ minutes, due to _____
(If limited to 15 minutes or less, state the reason)I verify that my Attorney phone call was handled as documented above.
Inmate Signature: _____ Date: _____ Time: _____

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v.

No. CR-2007-434

ALBERT RAMIREZ,

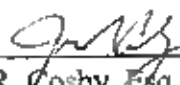
Defendant.

DESIGNATION OF EXHIBITS

Pursuant to Rule 12-212 NMRA, the Defendant designates the following exhibits:

1. State's Exhibits #1 - #110.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant
P.O. Box 3330
Roswell, New Mexico 88202-3330
(575) 625-0516

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez:

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.

Because of the late receipt of discovery, I requested a 60 day extension (since Ms. Stephenson requested two separate 90 day extensions but filed nothing, I didn't want to push things and ask for a full 90 days). Unfortunately, the State would not agree to my request. The judge gave us only 30 days, making our new Petition due May 19, 2018.

I have been working furiously to pull the Petition together so we will not miss the deadline. I sent the audio CDs to a transcriptionist to transcribe only those portions of the trial which support the habeas argument. I made reference to the transcripts by citing to the CD and counter number. Once I have the transcripts, I will replace the CD counter number with the actual transcripts as exhibits on receipt of same. Because I am still pulling together the exhibits, I have not labeled them yet. Regardless, I am providing you the Petition, together with the exhibits I do have.

Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you.

Sincerely,


LIANE E. KERR.

w/Petition

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY, NM
FILED OCT 23 2017

2017 OCT 23 AM 9:53

[Signature]
CLERK DISTRICT COURT

ALBERTO RAMIREZ,

Petitioner,

No. D-905-CR-2007-00434

vs.

STATE OF NEW MEXICO,

Respondents.

STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

[Signature]
Drew Tatum
DISTRICT JUDGE

APPROVED

[Signature]
Amanda Stephenson
Counsel for Petitioner

Approved via email 10/17/17
Andrea Reeb
District Attorney



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

October 26, 2017

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,

Amanda Stephenson /tg
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

Xc: file

**FEDERAL PUBLIC DEFENDER
DISTRICT OF NEW MEXICO**

Margaret Katze
Supervisory Assistant
Albuquerque Office
111 Lomas NW, Suite 501
Albuquerque, NM 87102
Tel (505) 346-2489
Fax (505) 346-2494
Toll Free 877-511-4686

Stephen P. McCue
Federal Public Defender
Albuquerque

Barbara Mandell
Supervisory Assistant
Las Cruces Office
506 S. Main St. Suite 600
Las Cruces, NM 88001
Tel (575) 527-6930
Fax (575) 527-6933
Toll Free 855-527-6930

August 28, 2017

Albert Ramirez # 69597
Penitentiary of New Mexico
P.O. Box 1059
Santa Fe, NM 87504


Dear Mr. Ramirez,

I heard the phone message you left on August 24, 2017. It sounds like you want an explanation of the time limits that apply to federal habeas corpus. That is a complicated subject that I will try to explain.

The one-year time limit begins 90 days after the state supreme court decides the direct appeal. In your case, I believe that date would be February 29, 2017, because the Supreme Court affirmed your convictions on December 1, 2016. The one-year clock runs whenever you do not have a properly filed habeas petition pending in state court. It stops when state habeas proceedings are ongoing. It begins again when those proceedings have ended. If you file a second habeas proceeding before the one year time ends, then the clock stops again. In short, filing another habeas petition will not cause you to be untimely as long as the one year clock has not run out. I hope this is understandable.

If you have any other questions or requests, please feel free to contact me

Sincerely,



Chuck McCormack
Research and Writing Specialist

cmc/mhp

COYTE LAW P.C.

201 Third St NW, Suite 1920
Albuquerque, NM 87102
Tel (505) 244-3030 Fax (505) 242-4339
mcoyte@earthlink.net

September 14, 2016

Albert Ramirez (#69597)
CNMCF
P.O. Drawer 1328
1525 Morris Rd.
Los Lunas, NM 87031-1328


Dear Mr. Ramirez,

Thank you for considering Coyte Law P.C. (Matthew E. Coyte, Esq.) to represent you in pursuit of your claims. Unfortunately, I am too busy at this time to take your case and will be unable to represent you.

Because I will not be representing you, I wish to urge you to seek the assistance of other counsel quickly to ensure that your rights and claims are protected. There may be one or more statutes of limitation that may be about to expire on your claims. I am not in a position to advise you on which deadlines apply to your case because I do not have enough information to advise you and because I am not representing you. Please note that if such deadlines expire before you act, you may lose valuable rights. You should therefore take immediate steps to contact other attorneys to preserve whatever rights you may have.

In declining this representation, this law firm is not expressing an opinion on the merits of this case. I am sorry that we will be unable to represent you or take any action on your claims. I wish you luck in finding an attorney or pursuing your claims on your own behalf.

Yours truly,



Matthew E. Coyte
Coyte Law P.C.

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden



Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: Alberto Ramirez #69597
5B-F107

FROM: Bayola Luna
5B Classification Officer

DATE: 3/2/18

RE: Attorney Call

Your request for an attorney telephone call to Attorney Stephenson has been denied by Ms. Stephenson. She advised she no longer represents you. Your case has been assigned to Contract Attorney Leann Kerr.

I will be attempting to get a hold of Ms. Kerr to schedule the call for you. I will notify you when this has been scheduled.

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden



Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: Alberto Ramirez #69597
5B-F107

FROM: Bayola Luna
5B Classification Officer

DATE: 3/9/18

RE: Attorney Call

I have scheduled an attorney phone call for you with Attorney Tucker for Wednesday, April 25, 2018 @ 10:30 am. Please ensure you are in my office 5 minutes prior to the scheduled time.

Brian Tucker

Contract Attorneys

SOS-395, 2892

Legal Services

Request additional Forensic
Transcript, Medical/Mental Health
Records Court pays not lawyer
Need to contact corrections
Sign we'll lawyer get them.



LIANE E. KERR, LLC
Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

DATE: October 5, 2018

TO: Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

Enclosed please find the following

State's Response

Please:

_____ File and return endorsed copy to this office.

_____ Sign and return to this office.

_____ Check in the amount of \$ _____ for

_____ Per your request.

 X For your information.

_____ Please contact the office to schedule an appointment.

_____ Pay vendor directly.

_____ Other:

Sincerely,


Yareli O'Leary
Legal Assistant to
LIANE E. KERR LLC



Law Offices of The Public Defender

Bennett J. Baur
Chief Public Defender

February 23, 2018

Albert Jose Ramirez
DOC #69597
Southern New Mexico Correctional Facility
PO Box 639
Las Cruces, NM 88004

Re: **ALBERT RAMIREZ vs. State of New Mexico**
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez:

This office has recently opened a file on your habeas case, and I have determined that your case should be assigned to a contract attorney outside of this Department. If you have any questions about this issue, you may contact me to discuss it at 505-369-3611.

Your new attorney on this habeas matter is: Liane Kerr, PO Box 10491, Albuquerque, NM 87184; phone # (505) 848-9190. Please contact this lawyer regarding further proceedings in the case.

Sincerely,

Brian Tucker

Supervising Attorney/Post-Conviction Habeas Unit

xc: File

AFFIDAVIT

5/9/18

I CONTACTED AMANDA STEPHENSON SEVERAL TIMES LET HER KNOW THE DEADLINE WOULD BE SOON TO FILE THE AMENDED HABEAS PETITION EACH TIME SHE WOULD SAY SHE WOULD FILE IT AND REQUESTED THE TRANSCRIPT FROM THE COURT CLOSING AND OPENING ARGUMENTS REBUTAL AND OF SPECIFIC WITNESSES SAM SAIZ, DENNIS FITE, OFFICER HOWARD, TONY BERRAZ, SANDY LOOMS, JALE LICE BUT NEVER GOT THE TRANSCRIPT OR DISCOVERY OR MY MENTAL HEALTH RECORDS FROM PRISON NM DEPT CORR. TO SHOW I WAS SUFFERING FROM SCHIZOPHRENIA + PTSD + DEPRESSION AT TIME OF TRIAL + POSSIBLY TIME OF CRIME I WAS INSANE OR INCAPACITATED AND NOT COMPETENT I WAS DECEIVED BY AMANDA STEPHENSON POST CONVICTION HABEAS ATTORNEY SHE LIES NOTHING FILED NOTHING ONLY LIED CONTINUOUSLY → TO ME. NO LOYALTY. AND THIS CAUSED ME NOT TO BE ABLE TO PROPERLY →

5/9/18

consult with my new private
 ATTORNEY LIAM REE AND
 ALSO APPRIASE COUNSEL WAS
 INEFFECTIVE FOR NOT CLAIMING
 INSUFFICIENT EVIDENCE TO CONVINCE
 AND DOUBT PROBABLY ON THE
 TWO COUNTS OF TEMPORARY W/
 EVIDENCE AND I TOLD HIM
 TO CHECK CLOSING ARGUMENTS
 THIS WAS PROSECUTORIAL
 MISCONDUCT. BY CALLING ME
 A MENACE TO SOCIETY, LIE,
 MANIPULATOR, COLD BLOODED KILLER NO
 EVIDENCE TO SUPPORT THIS AND
 ASKING WITNESS SAM SAIZ IN
 DIRECT EXAM OR YOU TELLING THE
 TRUTH AND AT THE TIME OF INCIDENT?
 THERE IS NO REASON FOR YOU TO LIE?
 VOUCH FOR WITNESS. BOOSTING CREDIBILITY
 AND OF EXHIBIT 110 LETTER STATING
 OF SHOOTING PEOPLE, JACKING SEARING
 DRUGS KILLING, WAS ADMITTED READ
 TO JURY THEN EXCLUDED, BUT USED
 IN CLOSING ARGUMENT ➔

Showing pictures of deceased gruesome
 scene of objectives.
 ASK FOR HEARING OF COMECHANGE too
 9/19/18

And Appellate counsel Failed to argue
 there was conflict of interest
 between myself and trial counsel
 I wanted de Maxine Swartz called
 as a witness to my sanity & competency,
 mental illness, and in not Faking,
 Lie and Truthful my credibility
 character witness.

All this was ineffective
 assistance of counsel.

TRIAL counsel Failed to question
 all jury members After I Fell
 down and they saw my leg
 Shakes. Failed to Request A
 mistrial And Failed to object
 in closing Argument & Rebutal
 And examination of my witnesses
 I was prejudiced and
 denied my right to effective
 assistance of counsel

I was denied my due process
 Rights And A fair trial

5/9/20

5th and 14th advertisement and
6th advertisement and violation
of Federal law and Federal Rights
and Federal and United States
laws and constitution.

Between Jan. 15th and Feb 29th 2018
I had no pens and paper to write
and not able to speak to
my Habeas attorney Jane Ruck
I spoke to HER 10 minutes in
about 2½ months, we had
About no time proper to file

5/9/2018

petition, research, go over voluminous
transcript, records, discovery to
Fully claim All of our claims raised.

Ineffective assistance of trial counsel
Ineffective assistance of appellate
counsel

Improper comment on silence

○ Improper prior bad acts evidence

Tampering with evidence double jeopardy
Prosecutorial misconduct
cross examination, direct examination,
closing argument,
Incompetency to stand trial
revelation of competency
Insufficient evidence to convict
court improper exclusion of
Sex Abuse.

Jury saw me shackled in court
and fall down.

○ Challenge Grand Jury indictment

5/9/2018

TRIAL counsel Failed to ask for
Motion For change of venue even
though extensive news media
as alleged attacked victim on previous
occasions.

Failed For Motion Pretrial discovery
or give me all discovery
Failed to suppress evidence,
Exhibits, 110, 357 Bullets, Cellphone video
Failed to get all psych exams.

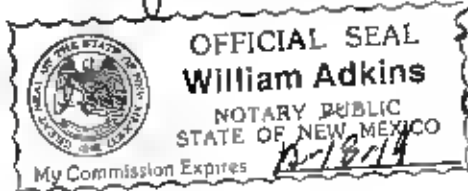
~~State~~ district court abused discretion
improperly denied Motion For
extension to file Amended petition
to meet with + discuss issues
review, transcripts, conduct Research
and discovery counseling, And dishonesty
disruption by Amanda Stephenson
I told Her to file it in Dec 2017
She said she would and did
nothing. no research, no request
for transcripts, no discovery
requests, only extension to
do nothing.

5/4/18

THIS AFFIDAVIT IS TO SHOW I DID NOT HAVE ENOUGH TIME TO CONSULT WITH LIAKE ILEER HABEAS ATOKNEUAPPT. 2/28/2018 / I AM GOING TO DO MY BEST I ASK THE DISTRICT COURT AND FEDERAL COURT TO NOT DENY MY PETITION OR DISMISS IT BECAUSE I DID NOT SAY WHAT WITNESSES WOULD SAY AT AN EVIDENTIARY HEARING, OR WHAT EVIDENCE I'D SHOW TO PROVE I'M WRONGFULLY CONVICTED IF I'D OF GOT A 60 DAY EXTENSION THIS WOULD OF BEEN POSSIBLE THERE WILL BE A MISCARriage OF JUSTICE BY NOT ALLOWING ME 60 DAY EXTENSION OR TO GIVE ME AN EVIDENTIARY HEARING AND PROPERLY ABLE TO PRESENT MY ISSUES TEVIDENCE DOCUMENTS, WITNESSES AND DISCOVERY AND TRIAL TRANSCRIPT.

State of New Mexico
County of Dona Ana

Thank you very much
Albert Ramirez



Signed and sworn before me
on May 10, 2018 by Alberto Ramirez
Notary: William Adkins
My Commission Expires 12-18-18

5/9/18

I was in an accident ^{April} 2007. left me unable
to walk work or drive, Hallucinations, delusional,
paranoid, severely depressed. taking
several medications.

There would be a miscarriage of
Justice to not allow me an 60
day extension to properly talk with
my HOBBS lawyer and raise issues
in Fed-district court. I need
trial transcript, discovery to research.

I'm being done wrong by AMARA stephenson
and the court. I needed more time.
I believe wrongly convicted.

Thank you very much
Good Bless you

EXHIBIT LOG

EXHIBIT	IDENTIFICATION/LOCATION
A	Indictment
B	Jury Instruction
C	Verdicts
D	J&S
E	Broke mother's windshield; Transcript, 10/8/13, 4:03:49-4:08:21; pg. 2-3
F	Shackles; Transcript, 10/7/13, 3 10 07-3:11:12, pg. 1
G	Notice to Determine Competency (1/14/07)
H	Evaluation by Dr. Maxann Shwartz (incompetent)
I	Commitment to NMBHI for 3 months
J	Dr. Burness testified that Defendant malingering; Transcript 10/9/13 CD B-2:41:40, pg 19
K	Competency Hearing: pgs. 1-42
L	Order Determining Competency (9/16/08)
M	Motion in Limine re: statements made to Dr Burness
N	2 nd Motion for Mental Evaluation (9/22/2011)
O	Court Order for 2 nd Evaluation at NMBHI
P	Further forensic testing ordered by court
Q	Order deeming Defendant competent to stand trial on March 1, 2013
R	The defense attorney informs court that there were matters concerning Mr. Ramirez' mental health. Transcript: 10/7/13, 12:05 ; pg 9
S	The Court notes that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. Transcript: 10/8/13, CD B 8:42:10-8.43:50; pg 6
T	Mr. Ramirez issues a rambling statement about his health and said that he heard voices and is concerned his attorney is mad at him. Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58, pg. 13, 15-18, 20-21

U	Defense reminds the Court of competency issues and alerts the Court that Mr. Ramirez does not understand the proceedings and is incapable of assisting in his defense. Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49; pgs. 9-12
V	Court expresses that Mr. Ramirez is malingering, but notes it had never seen a defendant act the way Mr. Ramirez was acting. Transcript: 10/9/13, 10 18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20; pg. 19, 31
W	Another Defense request for review of competency. Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46; pgs. 35, 12
X	Mr. Ramirez asks that jury be told about his medical problems and tells the Court that he does not believe the trial to be fair, as the right questions were not being asked; Dr. Shwartz' testimony is necessary to him having a fair trial Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15; pgs. 20-33
Y	The Defense informs the Court and the State that it will not be submitting a competency instruction. Transcript, 10/10/13, 4 32:27-4:35:41; pgs. 32, 34
Z	Transcriptionist Certificate

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2017

Supreme Court of New Mexico
8/11/2017 10:57:06 AM
Office of the Clerk

Joey D. Moya

NO. S-1-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v

GERMAN FRANCO, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST
A true copy was served on all parties
or their counsel of record on date filed

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia

Chief Deputy Clerk

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
FILED IN COURT OFFICE

2014 JAN -8 AM 11:12

STATE OF NEW MEXICO.

Plaintiff.

Shirley B. Beyer
CLERK OF DISTRICT COURT

v

ALBERT JOSE RAMIREZ,
DOB [REDACTED] 988
SOC [REDACTED] 7793
STN: 050100070340

No. D-0905-C R-0200700434

Defendant

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER coming on for hearing on January 8, 2014, before the Honorable Teddy J Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant, appearing personally and by his attorney, Jesse R. Cosby, Attorney at Law, the Defendant having been convicted on October 11, 2013, pursuant to guilty verdicts by the jury accepted and recorded by the Court of the following crime(s):

Count 1: [0001], Murder in the first degree (willful & deliberate), contrary to §30-02-01(A)(1), NMSA 1978.

Count 2: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Count 3: [4230], Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Defendant is hereby found and adjudged guilty and convicted of said crime(s), and is sentenced to be imprisoned by the Department of Corrections for the following terms

As to Count 1, a term of life imprisonment

As to Count 2, a term of three (3) years.

As to Count 3, a term of three (3) years

Counts 1, 2, and 3, shall run consecutively, one after the other, for a total term of life imprisonment, plus six (6) years *mental and physical health as available.*


Dept of Corrections should provide mental and physical treatment as available for me
Upon completion of the term provided herein, the Defendant will be subject to release under parole supervision, subject to the statutory provisions relating to condition, supervision and return of parolees.


Therefore, You the Sheriff of Curry County, are hereby commanded to take Defendant in custody and deliver Albert Jose Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive him and confine Albert Jose Ramirez for the above term.

Defendant shall receive credit for 2370 days (6 years, 5 months 25 days) of pre-sentence confinement, from date of arrest on July 15, 2007 until date of sentencing, January 8 2014 and for post-sentence confinement from January 9 2014, until delivery to the Department of Corrections


TEDDY L. HARTLEY
DISTRICT JUDGE

HAVE SEEN


Matthew Chandler
District Attorney


Jesse B. Cosby
Attorney for Defense

D.A. MCJwg

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12: 21

Julio B. Borge
CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

5/10/21

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.



HON. DREW D. TATUM
District Judge, Division II

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER
RULE 5-802 NMRA**

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, and the Court being fully advised of the circumstances;

THE COURT FINDS THAT:

☒ The petitioner is incarcerated.

IT IS THEREFORE ORDERED THAT:

☒ The Law Office of the Public Defender is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

☒ Petitioner's counsel shall file an amended petition or file a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.


DREW D. TATUM
District Judge, Division II

*My does it
July 27th 2017
Filed
IF I sent
Petition
Clerk
July 27th 2017*

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 JUL 27 PM 2:17


CLERK DISTRICT COURT

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.

A handwritten signature in black ink, appearing to read 'Drew D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
District Judge, Division II

STATE OF NEW MEXICO
 COUNTY OF CURRY
 IN THE NINTH JUDICIAL DISTRICT COURT

NEW MEXICO JUDICIAL
 OFFICE
 RES. OFFICE

2014 JAN -8 AM 11:12

STATE OF NEW MEXICO.

Plaintiff

Shelly Brown
 Clerk of Court

v

ALBERT JOSE RAMIREZ,
 DOB: [REDACTED] 988
 SOC: [REDACTED] 7793
 STN: 050100070340

Defendant

No D-0905-CR 0200700434

JUDGMENT, SENTENCE AND COMMITMENT

THIS MATTER coming on for hearing on January 8, 2014 before the Honorable Teddy Hartley, District Judge, Plaintiff appearing by Matthew Chandler, District Attorney, and Defendant, appearing personally and by his attorney, Jesse R. Cosby, Attorney at Law, the Defendant having been convicted on October 11, 2013, pursuant to guilty verdicts by the jury accepted and recorded by the Court of the following crime(s):

Count 1: {0001}, Murder in the first degree (willful & deliberate), contrary to §30-02-01(A)(1), NMSA 1978.

Count 2: {4230}, Tampering with evidence (highest crime a capital, first or second degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Count 3: {4230}, Tampering with evidence (highest crime a capital, first degree felony), a third degree felony, contrary to §30-22-05, NMSA 1978.

Defendant is hereby found and adjudged guilty and convicted of said crime(s), and is sentenced to be imprisoned by the Department of Corrections for the following terms

As to Count 1, a term of life imprisonment

As to Count 2, a term of three (3) years

As to Count 3, a term of three (3) years

Counts 1, 2, and 3, shall run consecutively, one after the other, for a total term of life imprisonment, plus six (6) years *mental and physical health as available.*

Despite the fact that the defendant is a minor, the court shall provide mental and physical treatment as available to the defendant.
Upon completion of the term provided herein, the Defendant will be subject to release under parole supervision, subject to the statutory provisions relating to condition, supervision and return of parolees.

Therefore, You, the Sheriff of Curry County, are hereby commanded to take Defendant in custody and deliver Albert Jose Ramirez, together with this commitment, to the Department of Corrections, which is hereby commanded to receive him and confine Albert Jose Ramirez for the above term

Defendant shall receive credit for 2370 days (6 years, 5 months, 25 days) of pre-sentence confinement, from date of arrest on July 15, 2007, until date of sentencing, January 8, 2014, and for post-sentence confinement from January 9, 2014, until delivery to the Department of Corrections


TEDDY L. HARTLEY
DISTRICT JUDGE

HAVESFEN


Matthew Chandler
District Attorney


Jesse B. Cosby
Attorney for Defense

D.A. MC/jwg


 Joey D. Moya
IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**February 05, 2019****NO. S-1-SC-37501****ALBERT RAMIREZ,**

Petitioner,

v.

JOHN GAY, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, and Justice Michael E. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of February, 2019.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By



Chief Deputy Clerk

EXHIBIT

BB

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED JUN 24 2019

2019 JUN 24 AM 10: 58

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

Shelly Dwyer
CLERK DISTRICT COURT

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

~~Clearance~~

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. D-0905 CR 020 0700 434

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN GERMAN FRANK

EXHIBIT

CC

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS

1. ALBERT RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PNM Penitentiary of New Mexico (name of facility and county of detention) by Warden Gorman Franco (name and title of person having custody).

2. This petition

☒ [W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ [W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

PA INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL
AND APPEAL COUNSEL ON APPEAL →

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I TRIED TO STAY
TO GO TO NO
AFTER. IMPOSSIBLE
COURT.

COUNSEL MR. COSBY. BEFORE TRIAL BEGINS AND AFTER I

TRIED TO FIRE HIM IN FRONT OF JURY did VERBALLY

ASSAULT And made threats stated, STUPID LIKE BITCH

I promise to be ineffective assistance if you keep on

SAYING you want to GO TO TRIAL AS I INSIST. I HOPE YOU GET LIFE.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

(I don't know what this means. SIE)

IT TRY? ITS A CONSTITUTIONAL RIGHT TO

EFFECTIVE ASSISTANCE AT TRIAL + ON APPEAL

I've wrote on Extra sheets of papers to

EXPLAIN. SOME FACTS BEST AS I CAN.

+ EXHIBITS - EVIDENCE ALLEGATIONS

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES, I WAS TOLD APPEAL WAS DENIED TO FILE

A HABEAS PACKET. NOW HERE IS THE

HABEAS.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

I raised this issue in first HABEAS.

NOW THIS ONE IS TO ~~RE~~ Resubmit it

And FIX it.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

TO BE APPOINTED ASSISTANCE FROM
PUBLIC DEFENDER post conviction division
to assist ME TO get AN Evidentiary
HEARING to prove the ALLEGATIONS ARE TRUE

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

D-0905-CR-2007-00434 I'M NOT
SURE

(b) docket number:

D-0905-CR-2007-00434 DON'T
KNOW

(c) name of judge:

Teddy. L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700. N. MAIN ST

9th JUDICIAL DISTRICT COURT

2017

FIRST HABEAS JUNE 20th
granted HABEAS lawyer
But HABEAS failed to
raise ISSUES and grounds
so I send NEW HABEAS
Asking the COURT for a
NEW ATTORNEY to
ASSIST IN HABEAS
proceedings
1st ORIGINAL petition argued
I had CONFLICT OF
INTEREST with trial
COUNSEL

being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

ALBERT JOSE

1. RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at LEA COUNTY COAR. (name of facility and county of detention) by DWAYNE SANTESTEVAN (name and title of person having custody).

2. This petition

[W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

[W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

ISSUE 1:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, APPEAL COUNSEL, AND HABEAS COUNSEL ON AMENDED PETITION.

ISSUE 2. DISTRICT COURT ERRED IN ITS JUDICIAL DISCRETION IN DENYING PETITIONER MR RAMIREZ AN INQUIRY INTO HIS DISPUTE AND IRRECONCILABLE CONFLICT WITH PETITIONERS COUNSEL, PLEASE SEE ATTACH PAGE TO EXPLAIN FACTS THANK YOU.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

I DONT KNOW WHAT THIS MEANS. ILL TRY MY BEST.

I BELIEVE ITS MY CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND
TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, ON APPEAL, AND
HABEAS PETITION, SEE ATTACH PAGES TO EXPLAIN FACTS AND
EVIDENCE AND EXHIBITS. AND OTHER GROUNDS AND ^{basis of} CLAIMS.

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not: NO AND

YES SOME WHERE, BUT HABEAS ATTORNEY WAS RUSHED AND FAILED
TO RAISE ISSUES THAT WERE ON MY ORIGINAL PETITION.
HABEAS ATTORNEY REQUESTED A 60 DAY EXTENSION AND WAS
DENIED. SHE DID NOT FULLY MEET WITH PETITIONER.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not: NO GROUNDS HAVE NOT BEEN RAISED AND

YES, SOME NOT BECAUSE HABEAS ATTORNEY WAS RUSHED
AND FAILED TO RAISE 3 OR 4 ISSUES ON MY ORIGINAL PETITION
AND FAILED TO ATTACH DOCUMENTS. HABEAS LAWYER REQUESTED
60 DAY EXTENSION BUT WAS DENIED.

7. Briefly describe the relief requested:

WANT AN EVIDENTIARY HEARING, APPOINTED HABEAS ATTORNEY TO
ASSIST IN HABEAS PROCEEDINGS, A RETRIAL.

3. STATE CONCISELY THE FACTS UPON WHICH THE CONF. NED PERSON BASES THE CLAIM.

THE JUDGE IGNORED PETITIONERS REQUESTS FOR SUBSTITUTION OF COUNSEL AND DEMANDS TO FIRE HIS ATTORNEY. TWO WEEKS BEFORE TRIAL, TWICE IN TRIAL.

PETITIONER EXPRESSED DISATISFACTION, COMPLAINED OF COUNSEL NOT FILING MOTIONS FOR CHANGE OF VENUE.

WHEN THERE WAS INACCURATE EVIDENCE OF MR RAMIREZ

ATTACKING THE VICTIM BEFORE INCIDENT. ALSO OTHER

HIGHLY PREJUDICIAL INADMISSIBLE EVIDENCE. OF MR RAMIREZ

BREAKING WINDOWS, AND ASSAULTING BATTERY OFFICERS IN

SMALL COMMUNITY OF CLOVIS, PETITIONER ALSO

COMPLAINED ABOUT BEING CONFUSED OF PROCEDURES

AND COUNSEL NOT EXPLAINING PROCEDURES. MR. RAMIREZ

PETITIONER COMPLAINED OF A SERIOUS BREAKDOWN

IN COMMUNICATION BETWEEN COUNSEL AND PETITIONER.

PETITIONER TRIED TO COMMUNICATE TO COUNSEL

TO NO AVAIL. COUNSEL FAILED TO ADVISE PETITIONER

OF PLEA DEAL OR EXPLAIN THE MAXIMUM AND MINIMUM

TIME FACING. COUNSEL FAILED TO BE RESPECTFUL AND

RESPONSIBLE AND FULFILL HIS DUTY OF LOYALTY TO

ADVOCATE TO PETITIONER BY NOT CALLING OTHER

WITNESS PETITIONER WANTED CALLED AS WITNESSES.

COUNSEL THREATENED PETITIONER THAT IF

HE DID NOT TAKE PLEA AND KEEP ON INSISTING

TO GO TO TRIAL HE WOULD NOT PROVIDE

EFFECTIVE ASSISTANCE OF COUNSEL.

PETITIONER TOLD COUNSEL AND PSYCHIATRIST AND FAMILY OF BEING SEXUALLY ABUSED BY VICTIM AS A YOUNG CHILD.

COUNSEL FAILED TO ALERT THE COURT THAT PETITIONER TOLD HIM HE FELL DOWN JULY SAW HIS SHOCKIES AND HE FELL DOWN. AND THAT SHERIFF MOCERTY MANIPULATED ~~THE~~ THREATENED PETITIONER TO SAY HE DID NOT FALL DOWN AND THAT THE JULY DID NOT SEE HIS SHOCKIES.

PETITIONER ASKED COUNSEL TO REQUEST A MISDEMEANOR AND TO PUT THIS ON RECORD. COUNSEL REFUSED TO DO IT.

COUNSEL FAILED TO CALL WITNESS'S PRICILLA LOPEZ NIBOR EYE WITNESS, AND RICKY JARAMILLO EYE WITNESS TO HELP PROVE I WAS THE ONE BEING CHASED AND I SHOT IN FEAR FOR MY LIFE I DID NOT CHASE VICTIM.

COUNSEL FAILED TO INVESTIGATE FAMILY HISTORY OF MENTAL ILLNESS IN FAMILY. AND TO DEFENSE.

PETITIONER CALLED COUNSEL AND WROTE TO HIM COUNSEL WOULD NOT SPEAK TO ME AT ALL. AND IGNORED ME TO BUSY.

COUNSEL would not discuss trial strategy or anything.

COUNSEL told petitioner He Hoped He Got Life.

PETITIONER tried to speak on record twice to put this on record but was denied.

PETITIONER Request that the court GRANT Him an attorney to assist him in Habeas proceedings and to hold an Evidentiary Hearing on ineffective assistance of counsel because unfortunately all facts and allegations are not on the record to properly decide case.

COUNSEL PROMISED PETITIONER IF HE TESTIFIED PETITIONER WOULD BE ABLE TO TESTIFY OF BEING SEXUALLY ABUSED BY VICTIM AND NEIGHBOR EYEWITNESS SAN SAIZ

COUNSEL FAILED TO CALL FATHER JOSE RAMIREZ WHO WOULD OF TESTIFIED VICTIM ATTACKED HIM TWICE AND WAS AGGRESSIVE, ALSO BROTHER ISRAEL RAMIREZ WAS ATTACKED BY VICTIM TO SHOW AGGRESSION.

COUNSEL KNEW I HAD BEEN DRINKING ALCOHOL DAY OF INCIDENT AND TOLD ME TO NOT TALK OF BEING DRUNK IT WOULD NOT HELP.

PETITIONER HAD SEVERAL WITNESSES HE WISHED TO CALL, TO PRESENT IN SUPPORT OF HIS DEFENSE AUNT, SISTER, BROTHERS, FRIENDS, DOCTORS WHO TREATED HIM AFTER ACCIDENT.

COUNSEL FAILED TO ALERT COURT TO IMPORTANT FACTS IN ARGUING CASE. PETITIONER WAS IN AN ACCIDENT IN 2007 WHEN BEGAN TAKING ANTIDEPRESSANT MEDICATION, & OTHER MEDICATION THIS BECAME SEVERE DEPRESSION, HE WAS UNABLE TO WALK ONLY WITH CRUTCHES, SUFFERED DELUSIONS HALLUCINATIONS. PTSD.

STATE CONSIDER THE FACTS UPON WHICH THE CONFINED PERSON BASES THE CLAIM.

* THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER REQUEST, DEMANDS TO FIRE OR SUBSTITUTE COUNSEL

- ① THERE WAS NO INQUIRY BY JUDGE
- ② NO CONSIDERATION OF LENGTH OF DELAY
- ③ THE EXTENT OF CONFLICT CREATED

OTHER FACTS

* WHETHER I DENY PETITIONER'S CRIMINAL CONVICTIONS WERE OBTAINED IN VIOLATION OF HIS STATE AND FEDERAL RIGHT TO DUE PROCESS AND A FAIR TRIAL, WHEN PRIOR CHARGES AND WITHHELD ACTS WERE INTRODUCED ABOUT A BALANCING ANALYSIS UNDER RULE 11-404.B?

Evidence IF HEAD BUTTER A police officer inadmissible evidence of letter exist the writings of strongly people to prove element of premeditation

* FACTS

PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT SAY MR REMIREZ PETITIONER IS A MENACE TO SOCIETY AND A LIAR NO EVIDENCE TO PROVE THIS ITS PROSECUTORIAL MISCONDUCT.

* ALSO CLOSING ARGUMENT EVIDENCE ON PRIOR BAD ACTS ON INADMISSIBLE EVIDENCE OF BREAKING WINDOWS, BEAT BUTT BATTERY ON OFFICERS, AND DOING LEGAL RESEARCH IN CLOSING ARGUMENT AFTER JUDGE TOLD HIM TO NOT USE THIS EVIDENCE.

Prosecutor used prior bad acts to show character of propensity and it amounts to prosecutorial misconduct

- * ALSO PROSECUTOR CROSS EXAMINATION ON PETITIONER DOING LEGAL RESEARCH TO BEAT HIS CHARGES. THEN ASKED RIGHT AFTER YOU DID LEGAL RESEARCH TO GET THE JURY TO BUY THIS. ITS A COMMENT ON PETITIONER'S RIGHT TO ASSIST IN ASSIST.

OTHER FACTS OF CASE

- * HABEAS COUNSEL FAILED TO DISCUSS ISSUES PETITIONER WANTED ADDRESSED, AND ARGUED PROPERLY, 1ST HABEAS LAWYER AMANDA STEPHANSON REFUSED TO REQUEST TRIAL TRANSCRIPT OF CLOSING ARGUMENT HAD CASE 6 MONTHS WOULD NOT REQUEST OR FILE ANYTHING OR DISCUSS CASE WITH PETITIONER, 2ND PETITIONER LIAKE KERR WAS SUBSTITUTED BECAUSE OF CONFLICT OF INTEREST. HABEAS ATTORNEY RUSHED PETITION BECAUSE SHE WAS DEIVED 60 DAY EXTENSION REQUEST AND DID NOT MEET FULLY WITH ME. WAS TOO BUSY TO TALK ON PHONE.

Form 9-701 Petition For
Writ of Habeas Corpus
NM, R, CR Form 9-701

(4)

State concisely the Grounds
and law, or OTHER legal authorities
on which the CONFINED PERSON
BASES THE CLAIM.

See attach PAPERS.

FACTS + TRANSCRIPTS + Record +
NEWS PAPER CLIPPINGS + Some discovery
TO PROVE CLAIMS AND FACTS OF
Grounds And ISSUES.

A. INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL. CONFLICT OF INTEREST OR IRRECONCILABLE
CONFLICT

B. WHETHER THE TRIAL COURT ABUSED
its discretion in denying MR
RAMIREZ Request and demand to
Fire or Substitute OF COUNSEL.

① THERE WAS NO INQUIRY ② NO
CONSIDERATION OF length OF delay TO
Substitute COUNSEL. ③ THE EXTENT
OF CONFLICT CREATED.

C. WHETHER PETITIONER'S CRIMINAL
CONVICTIONS WERE Obtained IN VIOLATION
OF HIS State and federal Right
to due process and A Fair trial
When prior UNCHARGED acts WERE
introduced absent a balancing
analysis under RULE 11-404.B.

D. THE COURT Abused its discretion
IN NOT declaring A mistrial ON
COMMENTS OF PROSECUTORIAL MISCONDUCT
IN CROSS EXAMINATION, AND
DURING CLOSING ARGUMENTS.

See exhibits. documents need transcript
also.

E.

Things on record

MR RAMIREZ PETITIONER
WAS DENIED EFFECTIVE
ASSISTANCE OF HABEAS AMENDED
PETITION COUNSEL.

SEE EXHIBITS. FACTS. DOCUMENTS.

F. THE ERRORS ALL TOGETHER ADDED UP
TO CUMULATIVE ERROR AND DENIED
PETITIONER OF A FAIR TRIAL
AND DENIAL OF DUE PROCESS.

SEE EXHIBITS, DOCUMENTS
RECORDS NOTES.
TO PROVE CLAIMS,

I would like to be able to properly present
issues and grounds to prove my claims.

Please Thank you.

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

STATE OF NEW MEXICO VS. ALBERTO J. RAMIREZ

(b) docket number:

D-0905 - CR - 2007 - 00434

(c) name of judge:

Teddy L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700. N. Main St Clovis NM 88101

9. State the date of the final judgment, order or decree for confinement:

January 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE R. COSBY
P.O. Box. 3330 ROSWELL NM 88201

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court AND NEW MEXICO SUPREME COURT
OF APPEALS.

(b) The case name and docket number for each appeal:

STATE OF NEW MEXICO VS. ALBERTO JOSE RAMIREZ
No - S - 1 - SC - 34576

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed AUGUST 2014 DONT KNOW EXACT DAY
Decided december 1st 2016

(d) A summary of the grounds upon which each appeal was based:

Competency reevaluation, ineffective assistance of counsel,
Improper comments on silence, prosecutorial misconduct,
Prior bad acts, Shafter error, Judge failed to grant
mistrial due to prosecutorial misconduct

(e) The result of each appeal:

Denial Affirmed

(f) The name and address of the attorney on appeal:

STEVEN J. FOOSBERG

505 MARQUETTE N.W 87102

505-796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

HABEAS petition, petition OF certiorari denied now

I come back with new HABEAS corpus petition issued.

(b) The name and date of each case:

STATE OF NEW MEXICO VS. ALBERTO JOSE RAMIREZ

(c) the docket number:

NO - D- 0905 - CR- 2007 - 00434

Form 9-701 petition for writ of
HABEAS CORPUS, NM R. CR
Form 9-701

See Page 8.(F)

F. N.M. Supreme court. Ineffective assistance of
Counsel, improper commentary on Right to Remain Silent
the jury saw him in shackles and fall. Improper
introduction of prior bad acts. Judge refused to
declare a mistrial due to prosecutorial misconduct
on Amended petition - whether was denied both
Amended Right to effective assistance of counsel
And compulsory process

6. A disposition HEARING
WAS Scheduled But HABEAS
Denied.

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

9th Judicial district court of clarks nm 88101

(e) the result of each proceeding. (Attach a copy of each decision.)

Denied = DONT BELIEVE I HAVE ONE SORRY

(f) The issues raised in each proceeding:

Ineffective assistance of counsel, prior bad acts, prosecutorial misconduct, Incompetency reevaluation, double jeopardy temporary evidence

(g) State whether a hearing was held in connection with each of these proceedings:

ON HABEAS Amended petition while represented by HABEAS attorney a disposition hearing.

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

IN appeal STEVEN J. FOLSBELL 5-5 MARAQUETTE NW 81102 ALBUQUERQUE NM
 ON HABEAS petition LINDA E. KERR P.O. BOX 10491 ALBUQUERQUE NM 87184-0491

19. Do you seek the appointment of counsel to represent you?²

☒ Yes

___ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF Curry Lea

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On 6/5, 2019 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th judicial district court
___ Court (name of court)

Alouis (city), New Mexico, 88101 (zip code).

Alberto J. RAMIREZ
(
Signature

) Alberto J. Ramirez
(
Address

) 6900 B W. MILLER DR. Hobbs, N.M 88244

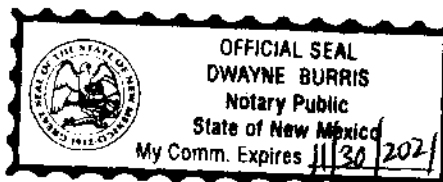
PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 5th day of June, 2019 by

(Name of petitioner) Alberto J. Ramirez

Dwayne Burris

Notary Public



My Commission Expires:

11/30/2021

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MW (describe manner of service), this 11th day of June, 2019.

(
Signature of petitioner

) Alberto J. Ramirez

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

- 1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.
- 2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through August 1, 2017.

End of Document

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West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
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NMRA, Form 9-704

**FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS
CORPUS PROCEEDINGS UNDER RULE 5-802 NMRA**

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

..... No.

Petitioner,

v.

.....

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS
PROCEEDINGS UNDER RULE 5-802 NMRA**

This matter having come before the court, and the court being fully advised of the
circumstances;

THE COURT FINDS THAT:

[W] the petitioner is incarcerated; or

FORM 9-704, ORDER OF APPOINTMENT FOR HABEAS..., NM R CR Form 9-704

[W] the petitioner is not incarcerated, and is indigent and unable to obtain counsel;
and

[W] This is a proceeding which a reasonable person would bring at that person's
own expense.¹

IT IS THEREFORE ORDERED THAT:

[W] the Public Defender Department is hereby appointed to represent the
Petitioner in the above-entitled cause without payment of the application fee.

[W] the Public Defender Department, shall appoint an attorney on contract
with the department represent the petitioner based on the conflict memorandum
reviewed by the court or as disclosed at a status conference with the court.

[W] petitioner's counsel shall file an amended petition or a notice of non-intent to
file an amended petition within ninety (90) days of the date of the filing of this order.

(
District Judge
)

USE NOTE

¹ Under the Indigent Defense Act, a person has the limited right to appointed
counsel representation in post-conviction matters "unless the court in which the
proceeding is brought determines that it is not a proceeding that a reasonable
person with adequate means would be willing to bring at his own expense" NMSA
1978, § 31-16-3(B)(3) (1968). Therefore, the Public Defender may not be able to
represent a petition in all cases.

If the Public Defender Department is appointed, the clerk of the district court shall
mail a copy of this order and a copy of the pro se petition to the Post-Conviction/
Habeas Division, Office of the Public Defender, 505 Marquette NW, Ste. 120,
Albuquerque, NM 87102.

Credits

[Adopted effective Dec. 31, 2014.]

FORM 9-705. PROCEDURAL ORDER ON PETITION FOR..., NM R CR Form 9-705

West's New Mexico Statutes Annotated
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FORM 9-705. PROCEDURAL ORDER ON
PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

..... No.

Petitioner,

v.

.....

Respondent.

PROCEDURAL ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

This matter having come before the court on petitioner's petition for a writ of habeas corpus or other pleading pursuant to Rule 5-802 NMRA of the Rules of Criminal Procedure for the District Courts, the court having reviewed the record and being otherwise fully advised in the premises, FINDS AND ORDERS THAT:

1. SUMMARY DISMISSAL/TRANSFER OF VENUE ¹

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[W] This matter is summarily dismissed because as a matter of law petitioner is not entitled to relief based on a review of the files, pleadings, and records which show that: *(statement of reasons required)*

2

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2. RETURN OF PETITION FOR FURTHER INFORMATION:

[W] The petition is returned to petitioner for additional information on the following issues/claims:

.....

.....

.....

.....

Pursuant to Rule 5-802(G) NMRA, a revised petition shall be filed within forty-five (45) days after service of this order.

3. FREE PROCESS AND APPOINTMENT OF COUNSEL:

[W] Petitioner is granted permission to proceed *in forma pauperis* based on Form 9-403 NMRA or because petitioner is an inmate of a correctional facility.

[W] Petitioner is not granted permission to proceed *in forma pauperis*.

[W] The Public Defender Department is appointed to represent petitioner based on the court's finding that this is a proceeding which a reasonable person would bring at that person's own expense. Upon being properly appointed, the Public Defender Department shall either file an amended petition or a notice of non-intent to file an amended petition within ninety (90) days of this appointment.²

4. RESPONSE:³

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(statement of reasons required)

AND

orders a response from respondent on the following claims:

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5. HEARING SCHEDULE:

[W] A status conference will be held on _____ (date), at _____ (time).

[W] A preliminary disposition hearing will be held on _____ (date), at _____ (time).

[W] An evidentiary hearing will be held on _____ (date), at _____ (time).

[W] An evidentiary hearing is not required, but legal argument will be heard on this matter on _____ (date), at _____ (time).

(
District Judge
)

USE NOTE

1. Paragraph 1 should only be used prior to the appointment of counsel and before the filing of any amended petition.

2. See NMSA 1978, § 31-16-3(B)(3) (1968).

3. After receiving the amended petition or notice that no amended petition will be filed, the court will then decide if a response will be ordered, and whether a status conference, a preliminary disposition hearing, or evidentiary hearing are required, and will send the parties notice. Paragraph 5 should be used when ordering a response at the time of appointment of counsel or after reviewing the amended petition or notice that no amended petition will be filed.

Credits

[Adopted effective Dec. 31, 2014.]

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State court rules are current with amendments received through August 1, 2017.

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**FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS
CORPUS PROCEEDINGS UNDER RULE 5-802 NMRA**

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

..... No.

Petitioner,

v.

.....

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS
PROCEEDINGS UNDER RULE 5-802 NMRA**

This matter having come before the court, and the court being fully advised of the
circumstances;

THE COURT FINDS THAT:

[W] the petitioner is incarcerated; or

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS., NM R CR Form 9-704

NMRA, Form 9-704, NM R CR Form 9-704

State court rules are current with amendments received through August 1, 2017.

End of Document

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West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

.....
Defendant-Petitioner,

S.Ct. No.

(leave blank; court will assign)

vs.

.....
District Ct. No.

(Name of Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
_____ DISTRICT COURT OF NEW MEXICO

.....
Defendant

-
Petitioner pro se
.....
.....
.....

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.....
(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

.....
.....
.....

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (*please include docket numbers and dates*):

.....
.....
.....
.....

3. Tell the story of what happened in your court case:

.....
.....
.....
.....

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**BASIS FOR GRANTING THIS PETITION FOR
WRIT OF CERTIORARI TO THE DISTRICT COURT**

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

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FORM 9-702, PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

POINT 2:

POINT 3:

(Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

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Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) _____.

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

_____ and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

.....
Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this ____ day of _____.

.....
Defendant-Petitioner, pro se

Credits

[Adopted effective Dec. 31, 2014.]

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FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS..., NM R CR Form 9-704

West's New Mexico Statutes Annotated
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9. Criminal Forms
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NMRA, Form 9-704

FORM 9-704. ORDER OF APPOINTMENT FOR HABEAS
CORPUS PROCEEDINGS UNDER RULE 5-802 NMRA

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

..... No.

Petitioner,

v.

.....

Respondent.

ORDER OF APPOINTMENT FOR HABEAS CORPUS
PROCEEDINGS UNDER RULE 5-802 NMRA

This matter having come before the court, and the court being fully advised of the
circumstances;

THE COURT FINDS THAT:

[W] the petitioner is incarcerated; or

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[W] the petitioner is not incarcerated, and is indigent and unable to obtain counsel;
and

[W] This is a proceeding which a reasonable person would bring at that person's
own expense.¹

IT IS THEREFORE ORDERED THAT:

[W] the Public Defender Department is hereby appointed to represent the
Petitioner in the above-entitled cause without payment of the application fee.

[W] the Public Defender Department, shall appoint an attorney on contract
with the department represent the petitioner based on the conflict memorandum
reviewed by the court or as disclosed at a status conference with the court.

[W] petitioner's counsel shall file an amended petition or a notice of non-intent to
file an amended petition within ninety (90) days of the date of the filing of this order.

(
District Judge
)

USE NOTE

¹ Under the Indigent Defense Act, a person has the limited right to appointed
counsel representation in post-conviction matters "unless the court in which the
proceeding is brought determines that it is not a proceeding that a reasonable
person with adequate means would be willing to bring at his own expense" NMSA
1978, § 31-16-3(B)(3) (1968). Therefore, the Public Defender may not be able to
represent a petition in all cases.

If the Public Defender Department is appointed, the clerk of the district court shall
mail a copy of this order and a copy of the pro se petition to the Post-Conviction/
Habeas Division, Office of the Public Defender, 505 Marquette NW, Ste. 120,
Albuquerque, NM 87102.

Credits

[Adopted effective Dec. 31, 2014.]

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NMRA, Form 9-704, NM R CR Form 9-704

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Ground A.

PAGE 1

TRIAL COUNSEL TOLD MR. RAMIREZ THAT HE WOULD NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL IF I MR. RAMIREZ CONTINUED TO INSIST ON GOING TO TRIAL AND WOULD NOT TAKE THE PLEA. ALSO TRIAL COUNSEL DID NOT EXPLAIN THE MINIMUM AND MAXIMUM TIME MR. RAMIREZ WAS FACING, MR. RAMIREZ ALSO TRIED TO FIRE HIS ATTORNEY ONCE IN FRONT OF THE JURY IN MIDDLE OF TRIAL, COMPLETE BREAKDOWN IN COMMUNICATION. THE DISTRICT COURT ABUSED ITS DISCRETION IN THE FACT THE JUDGE NEVER QUESTIONED THE TRIAL ATTORNEY OR MR. RAMIREZ PRIVATELY NOR IN DEPTH OF TO THE DISSATISFACTION AND OF THE COMPLAINANTS AND REQUEST TO CHANGE SUBSTITUTE COUNSEL.

ALSO. JUDGE COURT DID NOT INQUIRE INTO MR. RAMIREZ REQUEST.

Ground 2

page 12

The Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The fact that the jury pool was ready for selection does not automatically outweigh Mr. Ramirez's 6th Amendment Right.

The judge ignored the problems between Mr. Ramirez and his attorney. Correcting he was being well represented and would not substitute counsel.

- ① UNDER STANDARDS FOR DENYING A MOTION TO SUBSTITUTE COUNSEL. THE DISTRICT COURT ERRED. I WANT THE COURT TO REVIEW THE DENIAL OF A MOTION OR REQUEST FOR SUBSTITUTION OF COUNSEL FOR ABUSE OF DISCRETION.

TURN PAGE →

Ground A

PAGE 3

SEE UNITED STATES V. CORONA - GARCIA,
 210 ~~210~~ F.3d 973, 976 (9th Cir
 2000), cert. denied, 531 U.S. 898
 121 S.Ct. 231, 148 L.Ed.2d 165
 (2000).

IN Reviewing A denial OF
 Substitution OF COUNSEL.

- ① THE TIMELINESS OF THE MOTION
- ② THE ADEQUACY OF THE TRIAL
 COURT'S INQUIRY
- ③ THE EXTENT OF CONFLICT CREATED
 IN MR. RAMIREZ CASE THE JUDGE
 FAILED TO ADEQUATELY BALANCE MR
 RAMIREZ 6th ADMIRALTY RIGHTS AGAINST
 ANY INCONVENIENCE AND DELAY
 FROM GRANTING A CONTINUANCE.

ALSO, I BRING THIS AS NOT A
 LAWYER.

ISSUE MAYBE. IRRECONCILABLE CONFLICT
 OR CONFLICT OF INTEREST
 AND ABUSE OF DISCRETION.

Thank you →

Ground A

PAGE 4

SEE. U.S. ADELZO - GONZALEZ
Cite as 268 F.3d. 772
(9th Cir 2001)

- ABSENT Compelling purpose, it is violation of Sixth Amendment to deny motion to substitute Counsel; is error that must be reversed, regardless of whether prejudicial results.

MR. Ramirez states, trial counsel used bad language threatened to provide effective assistance of counsel if MR. Ramirez insisted to go to trial, instead of taking plea.

TRIAK called MR Ramirez A
a lying stupid mexican 'SON
OF A BITCH. and Hoped MR.
Ramirez Gets life.

page 5 Counsel 2

THIS IS EXTRA INFORMATION
THAT NEEDS TO BE READ FOR THIS
PETITION.

TRIAL COUNSEL DENIED A FAILED TO
PROVIDE EFFECTIVE ASSISTANCE OF
COUNSEL.

TWO WEEKS BEFORE TRIAL MR.
RAMIREZ REQUESTED SUBSTITUTE OF
COUNSEL AND EXPRESSED
DISSATISFACTION and that there
WAS A breakdown IN COMMUNICATION

SEE CASE TRUNG TRAN NGUYEN
V. UNITED STATES OF AMERICA
NO. 00-10272

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

Submitted Dec. 12, 2000

Filed August 28th 2001

TURN PAGE 3

page 6. Council 2.

Under the standards for denying a motion to substitute counsel the district court erred.

United States v. Corona - Garcia, 210 F.3d, 973, 976 (9th Cir 2000). Cert. denied, 531 U.S. 898, 121 S.Ct. 731, 148 L.Ed. 2d. 165. 2000.

In denying substitution of counsel the court should of considered

- ① The timeliness of the motion
- ② The adequacy of the trial courts inquiry; and the extent of conflict created.

With regard to timeliness, as mentioned above the district judge failed to adequately balance Mr. Ramirez both Amendment Rights any inconvenience and delay from granting the continuance. Moore, 159, F.3d. at 1166. In Mr. Ramirez case the District Court judge did not even appear to consider the length of delay that would have been

IT WAS INEFFECTIVE ASSISTANCE
FOR TRIAL ATTORNEY TO NOT OBJECT
TO CLOSING ARGUMENT INADMISSIBLE
EVIDENCE PRESENTED. BATTERY ON OFFICER,
EXHIBIT 110 LETTER STATING OF SHOOTING
PEOPLE KILLING PEOPLE,
BROKEN WINDOWS, AND INEFFECTIVE
ASSISTANCE OF HOBBS' COUNSEL
NOT ARGUING THIS IN AMENDED
PETITION.

St v. A. Ramirez - CR07-434

COURTROOM ONE

Time	Speak	Note
9:32:20 AM	CT	COURT IN SESSION/COURT REMARKS PARTIES PRESENT/PURPOSE OF HEARING - TRIAL STARTS A WEEK FROM TODAY
9:32:43 AM		CT RECEIVED 2 LETTERS FROM DEFENDANT, BUT DON'T HAVE COPIES OF LETTERS, DA DIDNT BRING COPY EITHER. SHARE WITH ME YOUR CONCERNS
9:33:08 AM	JC	DEF IS ON THE LINE WITH US. DEF CAN HEAR PROCEEDINGS. LETTERS FROM DEFENDANT. I MET WITH HIM AT THE PRISON, HE WANTED NEW COUNSEL, HE WOULD HAVE TO MOTION THE COURT AND YOU WOULD HAVE TO DETERMINE.
9:33:53 AM	CT	DOES DEF FEEL FREE TO RELAY CONCERNS
9:34:05 AM	DEF	I FEEL THAT COUNSEL HAS NOT FULFILLED DUTIES AS MY ATTY, HAS NOT LET ME KNOW ABOUT ANYTHING GOING ON IN COURT. BEEN CONFUSED AND HE DOESN'T EXPLAIN THINGS TO ME. I ASKED HIM TO FILE MOTIONS FOR PHYSICAL EXAMINATION, LEFT LEG SHORT, UPPER BODY IS CROOKED, LIMITED DISABILITY. BEEN THIS WAY BEFORE ACCIDENT. I ALSO EXPLAINED FOR PSYCH EVAL SUFFERED BEFORE ACCIDENT AND CRIME, SUFFER FROM DELUSIONS, HALLUCINATIONS, DEPRESSION. LAST TIME I WAS ASSAULTED BY EMPLOYER AT HOSPITAL, ONE OF THE REASONS I BELIEVE HE LIED TO COURT ABOUT ME, I WASN'T COOPERATING, MALINGERING. I'VE BEEN FOUND W/MENTAL AND PHYSICAL ILLNESS. I TALK TO DR FINK AND HE SAID THE STATES JOB IS TO FIND ME COMPETENT. THEY WANT ME COMPETENT TO SEND ME TO TRIAL. NOT FAIR TO TALK TO ME ABOUT NOTHING.
9:36:38 AM	DEF	DON'T FEEL I WAS PROPERLY EVALUATED, ALSO, NEUROLOGICAL EXAMINATION, SEVERLY ILL, MENTALLY AND PHYSICALLY. FEEL COURT DOESN'T CARE ABOUT THAT. COUNSEL HAS NOT FILED MOTIONS, I WANTED PRIVATE INVESTIGATOR. CASE WORKER HAS BEEN HERE, CALLING FOR ME, THEY WERE BUSY, COUNSEL NOT IN GIVING ME A RUN AROUND. I TOLD COUNSEL I WANTED TO KNOW WHAT WAS GOING ON WITH MOTIONS AND INVESTIGATOR. I DIDN'T KNOW WHEN I WAS GOING TO TRIAL. I DIDN'T HAVE ENOUGH TIME TO PREPARE FOR MY CASE. DRS TREATED ME THAT SAID I WAS DISABLED. BEEN IN WHEELCHAIR FOR 2 YRS. DON'T KNOW THE DRS. I WANTED NEW COUNSEL. HE SAID THEY PROBABLY WOULDN'T LET ME HAVE NEW COUNSEL. FEEL LIKE I'M GOING TO LOOSE THIS CASE. HE HASN'T TALKED TO ME ENOUGH ABOUT THIS CASE.

St v. A. Ramirez - CR07-434

COURTROOM ONE

Time	Speak	Note
<u>9:38:59 AM</u>	DEF	I'M DISSATISFIED. THANK YOU FOR LETTING ME SPEAK. WANT TO ANNOUNCE THAT IF I COULD POSTPONE THE COURT, GET NEW ATTY. IF YOU WOULD BE WILLING TO, BUT IF NOT I WILL GO TO COURT WITH HIM. IF I LOOSE THIS CASE, DON'T WANT HIM TO BE MAD AT ME OR LOOSE CASE FOR ME, ASKING FOR NEW ATTY. NOT DOING HIS DUTIES AS ATTY. THAT IS HOW I FEEL. I SAID IT AND I JUST FEEL HE MIGHT LOOSE THIS CASE FOR ANY REASON. I DON'T HAVE A GOOD FEELING ABOUT GOING TO TRIAL. THANK YOU, THAT'S ALL I HAVE TO SAY.
<u>9:40:29 AM</u>	CT	ANY OTHER COMMENTS - NONE. LET ME ASSURE YOU OF SOME THINGS. FILE DEMONSTRATES THAT ATTY WOULD AND SHOULD DO IN YOUR CASE, HE IS A PROFESSIONAL AND WILL WORK AS HARD AS HE CAN. HE WON'T BE MAD AT YOU FOR TRYING TO CHANGE LAWYERS. HE IS A SEASONED TRIAL LAWYER. CAN'T THINK ANYONE WHO WOULD DO YOU A BETTER JOB, YOU ARE AS WELL REPRESENTED AS YOU CAN BE. DON'T WANT YOU TO BELIEVE YOU WON'T GET A FAIR TRIAL. BASED ON THAT, COURT WON'T SUBSTITUTE COUNSEL AT THIS JUNCTURE. GO TO TRIAL
<u>9:41:52 AM</u>	DEF	NO WAY I CAN POSTPONE COURT
<u>9:42:00 AM</u>	CT	THE FILE IS OLD AS YOU KNOW IT. DON'T THINK WITNESSES WOULD BE SURPRISES, LEGITIMATE WITNESS WILL BE HERE FOR TRIAL. THAT WILL BE TAKEN CARE OF. DON'T BLAME YOU FOR BEING CONCERNED
<u>9:42:38 AM</u>	DEF	ANY WAY THE DR CAN EXAMINE ME, FEEL I AM ILL. DON'T FEEL YOU WANT TO GIVE ME A CHANCE
<u>9:42:54 AM</u>	CT	YOU HAVE BEEN EXAMINED, YOU HAVE COMPLAINTS, WE ALL HAVE THEM. THE COMPLAINTS YOU HAVE VOICED, AND DRS EXAMINED YOU SAY YOU ARE ABLE TO GO TO COURT. YOU ARE ABLE TO GO TO TRIAL AND ABLE TO PROCEED AND THAT IS WHAT WE WILL DO.
<u>9:43:32 AM</u>	DEF	NO WAY TO POSTPONE THE COURT
<u>9:43:38 AM</u>	CT	NO REASON TO DO THAT, ALL PREPARED. IT WILL BE ON MONDAY.
<u>9:43:50 AM</u>	DEF	THANK YOU TO COSBY, AND DA -
<u>9:44:08 AM</u>	CT	WHAT YOU GOT IS NOT THE WAY IT IS. SUPREME COURT HAS APPT ME TO THIS CASE.
<u>9:44:24 AM</u>	DEF	I WANT YOU ON THIS CASE, YOU KNOW WHAT I WAS GOING THROUGH.
<u>9:44:37 AM</u>	CT	I WAS THERE THAT WE HAD THE HEARING. THE PLEA. REMEMBER YOU WERE CRYING.
<u>9:44:52 AM</u>	DEF	ALWAYS BEEN REMORSEFUL. WHEN BRETT CARTER GAVE ME EXTRA YEARS. I'M SORRY I WITHDREW MY PLEA.

COUSIN
did not explain this to me

following:

(1) the nature of the charge to which the plea is offered;

(2) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered, including any possible sentence enhancements.

(Emphasis added.) In order to ensure that the defendant understands “the nature of the charge[s],” *id.*, the district court must be satisfied that the defendant understands the essential elements of the charges that are subject to the plea. *See Garcia*, 121 N.M. at 548, 915 P.2d at 304. A related requirement directs the district court to “[make an] inquiry as shall satisfy it that there is a factual basis for the plea.” Rule 5-304(G) NMRA; *State v. Willis*, 1997-NMSC-014, ¶ 9, 123 N.M. 55, 933 P.2d 854. Finally, the record must contain an “affirmative showing that [the] plea was knowingly and voluntarily given.” *Garcia*, 121 N.M. at 547, 915 P.2d at 303; *see also Boykin*, 395 U.S. at 242-43.

{10} At the January 2009 plea hearing in this case, the district court tried to satisfy the requirements of Rules 5-303(F) and 5-304(G) by establishing, *inter alia*, a factual basis for the charges and engaging Defendant in an exchange intended to confirm the knowing, intelligent, and voluntary character of his plea. At the beginning of the plea hearing, the judge asked Defendant whether he understood the charges. The district

RP347

1 right to a jury trial and the right to confront one's accusers. *Id.* at 242-43; *State v.*
2 *Montler*, 85 N.M. 60, 61, 509 P.2d 252, 253 (1973). In addition, "we review the trial
3 court's denial of a defendant's motion to withdraw his guilty plea for an abuse of
4 discretion." *State v. Barnett*, 1998-NMCA-105, ¶ 12, 125 N.M. 739, 965 P.2d 323.
5 The "trial court abuses its discretion when it acts unfairly or arbitrarily, or commits
6 manifest error." *Id.* "A denial of a motion to withdraw a guilty plea constitutes
7 manifest error when the undisputed facts establish that the plea was not knowingly
8 and voluntarily given." *State v. Garcia*, 1996-NMSC-013, 121 N.M. 544, 546, 915
9 P.2d 300, 302.

10 (9) A plea is not knowing, intelligent, and voluntary unless the defendant
11 "understand[s] his guilty plea and its consequences." *Id.* at 547, 915 P.2d at 303; *see*
12 *also Boykin*, 395 U.S. at 243-44 (explaining that state trial courts should "make sure
13 [a defendant] has a full understanding of what the plea connotes and of its
14 consequence[s]"). Rule 5-303(F) NMRA codifies the matters our district courts must
15 address to ascertain that a defendant grasps the contents and consequences of a plea.
16 In relevant part, Rule 5-303(F) provides:

17 The court shall not accept a plea of guilty or no contest without first, by
18 addressing the defendant personally in open court, informing the
19 defendant of and determining that the defendant understands the

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>2:26:46 PM</u>	CHANDLER	RESPONDS, WITH REGARD TO THE DOUBLE JEOPARDY MOTION, THESE ARE TWO DISTINCT ACTS OVER A PERIOD OF TIME, THE MOST APPROPRIATE CASES STATE VS. DERRICK IRVIN, THE APPELATE COURTS SAID EACH TIME WEATHER THERE WAS SOME DIFFERENT ITEMS DIFFERENT MOVEMENT IN BETWEEN THE TWO, ETC.
<u>2:29:32 PM</u>		WHY WOULD YOU THROW AWAY A PERFECTLY GOOD PAIR OF SHORTS WITH YOUR ID IN THE DUMPSTER , THERE IS NO DOUBLE JEOPARDY ISSUE
<u>2:30:37 PM</u>	COSBY	PARAGRAPH PAGE 55 IN THE OPINION FROM 2006 OF SUPREME COURT CASE THERE WERE 5 COUNTS CHARGED ETC.
<u>2:34:16 PM</u>	COURT	IS OF THE OPINION , IN MY MIND THERE COULD BE TWO DIFFERENT THINGS, THE FACTS WOULD SUPPORT THAT HE DISPOSED OF HIS CLOTHING IMMEDIATELY AFTER THE INCIDENT, WILL NOT GRANT THE MOTION ON THE DOUBLE JEOPARDY, SEES YOUR POINT , THAT THERE IS SUFFICIENT EVIDENCE
<u>2:35:30 PM</u>	COSBY	WE HAVE A DIFFERENT TIME WHEN PHONE CALLS WERE MADE,
<u>2:36:02 PM</u>		AS TO THE FIRST DEGREE, RENEWS MOTIONS OF PSYCHOLOGICAL EVALUATION OF HIS CLIENT, I AM GETTING FRUSTRATED BECAUSE IT IS VERY DIFFICULT TO REPRESENT A CLIENT WHO IS.
<u>2:37:30 PM</u>		CONCERNED THAT HE IS NOT COMPETENT TO MAKE CHOICE TO TESTIFY
<u>2:37:42 PM</u>	COURT	ADVISES DFT THAT HE HAS RIGHT NOT TO TESTIFY, YOU DO NOT HAVE TO TESTIFY, IF YOU EXERCISE THAT RIGHT NOT TO TESTIFY, IT IS TABOO, IF YOU MAKE DECISION TO TESTIFY
<u>2:39:05 PM</u>	DFT	I DON'T KNOW WHAT TO DO, I DON'T THINK I AM MENTALLY BALANCED, I WANT TO ASK CAN JURY KNOW ABOUT MY MEDICAL PROBLEMS
<u>2:41:22 PM</u>	COURT	WE HAVE LISTENED TO YOU, THE ISSUES CONCERNING TO YOU ARE PERSONAL, THEY DO NOT ARISE TO THE POINT , WE ARE GOING TO GO FORWARD WITH THE TRIAL
<u>2:42:07 PM</u>	DFT	I FEEL THAT YOU ARE ALL AGAINST ME ETC.
<u>2:43:11 PM</u>	RECESS	
<u>3:08:40 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY, COURT HAS MADE RULINGS ON MOTION FOR DIRECTIVE VERDICT, WANTS TO READ FROM THE FILE ON THIS CASE,
<u>3:10:45 PM</u>		BELIEVES THAT DFT IS COMPETENT TO STAND TRIAL, PREPARED TO CONTINUE THIS TRIAL, DOES THE DEFENSE INTEND TO PRESENT A DEFENSE

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>2:08:49 PM</u>	COSBY	RXEX - WHAT IS A WASH "IT IS A THIN COATING OF THAT PARTICULAR MATERIAL, A JACKET IS GOING TO BE THICKER AND WEIGH MORE AND BE AN ACTUAL PART OF THAT BULLET ETC.
<u>2:11:28 PM</u>		WITNESS EXCUSED
<u>2:12:28 PM</u>		#20 WITNESS KEITH BESETTE CALLED BY CHANDLER / SWORN / DEX
<u>2:13:15 PM</u>		WORKS WITH CURRY COUNTY SHERIFF'S OFFICE LITTLE OVER 17 YEARS
<u>2:13:39 PM</u>		RESPONDED TO PLAINS REGIONAL HOSPITAL, AND TO COLLECT CLOTHING
<u>2:14:20 PM</u>		WHEN HE ARRIVED AT HOSPITAL WHAT DID HE SEE, HIS CLOTHING WAS UNDERNEATH HIM, DOES NOT KNOW HOW HIS CLOTHING WAS REMOVED
<u>2:15:24 PM</u>		DOES NOT RECALL IF CLOTHING WAS CUT OR NOT , COLLECTED IT AND BAGGED IT, AS HE REMEMBERS THERE WAS BLOOD ON IT, COLLECTED A WALLET AND A SET OF KEYS, HE HAD BOOTS
<u>2:16:10 PM</u>		DID NOT FIND ANY WEAPONS IN THE CLOTHING NOTHING BUT A SET OF KEYS AND HIS WALLET
<u>2:16:38 PM</u>	COSBY	XEX - DID YOU PUT THE CLOTHING IN EVIDENCE, DID YOU SEND IT TO THE CASE MANAGER , AT TIME THE COMMANDER WAS ROGER GRAU
<u>2:17:29 PM</u>		DOES NOT REMEMBER WHO HE GAVE CLOTHING TOO, GAVE THE BAG NOT THE ARTICLE
<u>2:18:10 PM</u>		WITNESS EXCUSED
<u>2:18:33 PM</u>	CHANDLER	STATE ANNOUNCES REST
<u>2:19:07 PM</u>		JURY EXCUSED FROM COURTROOM
<u>2:20:13 PM</u>	COSBY	MOTIONS CONCERNING FIRST THE TWO COUNTS OF TAMPERING OF EVIDENCE, DOUBLE JEOPARDY MULTIPLE CHARGES, STATE VS SILVA 2008 NM SUPREME COURT, FURTHER SITES CASES,
<u>2:22:00 PM</u>		BASICALLY OF WHAT IS ISSUE OF DOUBLE JEOPARDY, STATE HAS CHARGED TWO COUNTS OF TAMPERING, ONE WITH THE CLOTHING
<u>2:22:57 PM</u>		THERE IS NOT EVIDENCE THAT THEY WERE TAKEN INTENTIONALLY
<u>2:23:17 PM</u>		WHAT WE HAVE HERE IS A DISPOSITION OF SOME SHORTS, NOBODY DESCRIBED A RED BELT, NO EVIDENCE MY CLIENT DISPOSED OF THEM WITH SPECIFIC INTENT, IF HE DISPOSED OF THEM, AS FAR AS THE FIREARM, IT WAS DISPOSED OF BASED ON PHONE CALLS OF BAM BAM AND RAGS TO RICHES
<u>2:25:11 PM</u>		AS FAR AS HIM CALLING FROM THE JAIL, THEY TOOK INTERPRETATION OF BAM BAM BEING A GUN

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>1:58:18 PM</u>	CHANDLER	RXEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
<u>1:59:03 PM</u>	COSBY	RDEX - FURTHER COMMENTS
<u>1:59:45 PM</u>		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
<u>2:01:11 PM</u>		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
<u>2:01:52 PM</u>		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
<u>2:02:33 PM</u>		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
<u>2:03:05 PM</u>		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
<u>2:03:46 PM</u>		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
<u>2:04:34 PM</u>		HOW YOU BECAME AWARE OF THE PROBLEM
<u>2:04:52 PM</u>		BENCH CONFERENCE
<u>2:06:33 PM</u>	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
<u>2:07:37 PM</u>		REMOVE DFT FROM COURTROOM
<u>2:07:49 PM</u>		JURY EXCUSED FROM COURTROOM
<u>2:08:47 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY
<u>2:08:56 PM</u>		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
<u>2:09:11 PM</u>	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
<u>2:10:59 PM</u>		HAVE A COPY OF CASE , ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
<u>2:11:42 PM</u>	COURT	WANTS TO SAY THIS ON THE RECORD MR. COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
<u>2:12:05 PM</u>	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM , I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
<u>2:14:07 PM</u>		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>1:45:20 PM</u>		YOU WERE NOT HOMELESS "YES I WAS HOMELESS SINCE JANUARY 2007" YOUR BROTHER SAID YOU COULD NOT STAY THERE BECAUSE YOU WERE NOT FOLLOWING THE RULES, MY SISTER HAS TO MANY MOUTHS TO FEED ETC.
<u>1:46:31 PM</u>		YOU HAD A HOTEL YOU STAYED AT VALUE INN, DID NOT COST YOU ANYTHING BECAUSE SOMEONE WAS PAYING YOUR ROOM, MY MOM SAID SHE WOULD GET ME THE MOTEL FOR A WEEK,
<u>1:47:32 PM</u>		I DID NOT FEEL ANGRY, I WAS DEPRESSED
<u>1:47:55 PM</u>		ELADIO WENT INTO GARAGE TO PUT UP VACUUM AND YOU LIFTED UP YOUR SHIRT, HE DID NOT LEAVE ANY MARKS ON YOU ETC.
<u>1:48:58 PM</u>	COSBY	OBJECTION ARGUMENTATIVE
<u>1:49:06 PM</u>	CHANDLER	YOU SHOT HIM IN THE CHEST AREA "I DON'T KNOW MY EYES WERE CLOSED, "WHAT HAPPENED HE DID CHOKED ME AT ONE POINT" YOU DON'T GET SCRATCHED WHEN SOMEBODY IS CHOKING YOU
<u>1:50:06 PM</u>		GRACE FINKEY SAID SHE DROVE BY AND YOU WERE CHASING ELADIO WITH A GUN
<u>1:50:32 PM</u>		WHEN ELADIO WAS DOWN ON THE GROUND YOU SHOT HIM IN THE HEAD "WHEN HE CAME AFTER ME I SHOT"
<u>1:51:26 PM</u>		IF ELADIO WAS LAYING IN GROUND , "I SHOT TOWARDS THE GROUND I DON'T KNOW WHERE IT HIT HIM.
<u>1:52:01 PM</u>		IT IS NOTHING NEW FOR YOU TO BE INVOLVED IN ALTERCATIONS
<u>1:52:51 PM</u>		BENCH CONFERENCE
<u>1:53:29 PM</u>	CHANDLER	ISN'T IT TRUE THAT YOU HEAD BUTTED A POLICE OFFICER "YES"
<u>1:53:58 PM</u>		YOU WANT THIS JURY TO BELIEVE YOU WERE DEFENDING YOURSELF
<u>1:54:13 PM</u>	COSBY	MOVES FOR A MISTRIAL
<u>1:54:31 PM</u>	CHANDLER	YOU RECALL A LOT OF REQUESTS TO GO TO THE LAW LIBRARY TO RESEARCH
<u>1:54:51 PM</u>		BENCH CONFERENCE / NOT GOING TO GRANT A MIS TRIAL JUST DON'T ASK QUESTIONS
<u>1:56:06 PM</u>	CHANDLER	YOU TESTIFIED THAT IF YOU REALLY WANTED TO HURT OR KILL ELADIO OR DEBRA YOU COULD OF WALKED IN THE HOUSE AND DONE IT "
<u>1:56:42 PM</u>	COSBY	RDEX - YOU UNDERSTAND WHAT YOU ARE CHARGED WITH
<u>1:57:07 PM</u>		DID YOU AMBUSH ELADIO ROBLEDO THAT DAY, NO IT JUST HAPPENED, I HAD THAT GUN FOR MY PROTECTION IT JUST HAPPENED
<u>1:58:08 PM</u>		DID YOU DO ANYTHING TO PLAN THIS KILLING

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE GASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED , IT IS THE TIMELINE,
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THRE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE , I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR, FINK , IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING , AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

EXHIBIT ~~1~~ 2 page 4

Sam Saiz

CSP or Statutory rape

90's -

DA → County → Contra Ripel
Judge Hensley

DOB: [REDACTED] 58

SSN: [REDACTED] 3022

89-CR-10173

96-CR-12536 - DLT 3RD

THE minor
was set
abused
me at 15-16
gay guy

EXHIBIT 2

page 4

UNITED STATES of America,
Plaintiff-Appellee,

v.

Trung Tran NGUYEN, Defendant-
Appellant.

No. 00-10272.

United States Court of Appeals,
Ninth Circuit.

Submitted Dec. 12, 2000 *

Filed Aug. 28, 2001

Defendant was convicted in the United States District Court for the District of Guam, Harold D. Vietor, J., of three methamphetamine offenses. Defendant appealed. The Court of Appeals, Ferguson, Circuit Judge, held that: (1) denial of continuance violated defendant's due process rights, and (2) denial of motion to substitute counsel violated defendant's Sixth Amendment rights.

Reversed.

1. Criminal Law §1151

The Court of Appeals reviews the denial of a continuance for abuse of discretion.

2. Constitutional Law §268(3)

Criminal Law §590(2), 610

Denial of continuance in prosecution for narcotics offenses violated defendant's due process rights; district court denied continuance at meeting that defendant did not attend, when private defense attorney arrived on first day of trial indicating that he had been contacted by defendant's family, the continuance was denied without hearing despite defendant's repeated complaints to the court about his public defender, and public defender's acknowl-

edgment that the attorney-client communications had broken down, and trial judge stated that he did not travel halfway around the world to continue defendant's trial. U.S.C.A. Const.Amend. 5.

3. Criminal Law §1166(7)

In the absence of a sufficient summary on the record, the Court of Appeals affirms the denial of a continuance only if the district court displays adequate care and concern for the defendant's rights.

4. Criminal Law §641.10(2)

Generally, district judges have broad latitude to deny a motion for substitution of counsel on the eve of trial when the request would require a continuance; however, this discretion must be balanced against the defendant's Sixth Amendment right to counsel. U.S.C.A. Const.Amend. 6.

5. Criminal Law §641.12(1)

An unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel. U.S.C.A. Const.Amend. 6.

6. Criminal Law §641.10(2)

A defendant is denied his Sixth Amendment right to counsel when he is forced into a trial with the assistance of a particular lawyer with whom he is dissatisfied, with whom he will not cooperate, and with whom he will not, in any manner whatsoever, communicate. U.S.C.A. Const.Amend. 6.

7. Criminal Law §641.12(1)

Even if present counsel is competent, a serious breakdown in communications can result in an inadequate defense. U.S.C.A. Const.Amend. 6.

* The panel unanimously finds this case suitable for decision without oral argument. Fed.

R.App. P. 34(a)(2).

*Ineffective
ASSISTANCE
OF COUNSEL
SAME*

SCHELL v. WITEK
Cite as 218 F.3d 1017 (9th Cir. 2000)

1017

may state a claim cognizable under the APA that the Secretary of State has breached her duty, imposed by the FARR Act, to implement Article 3 of the Torture Convention. Such a claim, brought in a petition for habeas corpus, becomes ripe as soon as the Secretary of State determines that the fugitive is to be surrendered to the requesting government.

[18] We may not reach the merits of Cornejo-Barreto's claim at this time. Habeas corpus review is available only when no other relief is available.

We therefore AFFIRM the district court's denial of the petition for habeas corpus but direct that it should be without prejudice to the filing of a new petition should the Secretary of State decide to surrender Cornejo-Barreto.

KOZINSKI, Circuit Judge, concurring:

I do not join Section III of the opinion, because the question of whether petitioner would be entitled to judicial review of an extradition decision by the Secretary of State is not before us. I would hold only that the district court does not have jurisdiction to review petitioner's claim under the Torture Convention, because the FARR Act does not authorize judicial enforcement of the Convention, see *Sandhu v. Burke*, No. 97 Civ. 4608, 2000 WL 191707, at *9 (S.D.N.Y. Feb. 10, 2000), and the Convention is not self-executing under the four-part test of *Saipan v. United States Dep't of Interior*, 502 F.2d 90, 97 (9th Cir.1974). See *Barapind v. Reno*, 72 F.Supp.2d 1132, 1148-49 (E.D.Cal.1999); see also *Sandhu*, 2000 WL 191707, at *10.



Wayne Dale SCHELL, Petitioner-Appellant,

v.

Larry WITEK, Warden; Bill Lockyer, Attorney General, State of California,¹ Respondents-Appellees.

No. 97-56197.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 23, 2000

Filed July 11, 2000

Petitioner convicted of burglary filed pro se petition for writ of habeas corpus. The United States District Court for the Central District of California, John G. Davies, J., denied relief. Petitioner appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On en banc review, the Court of Appeals, Trott, Circuit Judge, held that: (1) evidence supported conviction; (2) petitioner did not waive and abandon his claim that state court violated his Sixth Amendment right to counsel by failing to rule on his pretrial motion requesting substitute counsel; (3) trial court's failure to inquire into request for substitute appointed counsel was subject to review to determine whether error actually violated petitioner's constitutional rights, overruling *Bland v. California Dept of Corrections*, 20 F.3d 1469; *Crandell v. Bunnell*, 144 F.3d 1213; (4) petitioner was entitled to evidentiary hearing on claims of irreconcilable conflict; and (5) petitioner was entitled to hearing on claims of ineffective assistance of counsel.

Affirmed in part, reversed in part, and remanded.

Opinion superseded, 181 F.3d 1094.

1. Bill Lockyer is substituted for his predecessor, Daniel E. Lungren, as Attorney General

for the State of California. Fed. R.App. P. 43(e)(2).

Ineffective Assistance of Counsel . .
In fact that Mr. Ramirez had a conflict
of interest with his trial attorney
and expressed dissatisfaction in requesting
substitution of counsel to free him.

whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate." *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir.1970).

There is no question in this case that there was a complete breakdown in the attorney-client relationship. By the time of trial, the defense attorney had acknowledged to the Court that Nguyen "just won't talk to me anymore." In light of the conflict, Nguyen could not confer with his counsel about trial strategy or additional evidence, or even receive explanations of the proceedings. In essence, he was "left to fend for himself," *United States v. Gonzalez*, 113 F.3d 1026, 1029 (9th Cir.1997), in violation of his Sixth Amendment right to assistance of counsel. Nonetheless, the District Judge ignored the problems between Nguyen and his attorney, commenting that Nguyen's "strike" was not ground for a continuance, explaining to Nguyen that "the Federal Public Defenders provide very good representation to defendants," and remarking that he was "totally comfortable" with the public defender representing Nguyen. The issue in this case is the attorney-client relationship and not the comfort of the court or the competency of the attorney.

Finally, the District Judge commented that any problems with his decision not to grant a continuance for the substitution of counsel could be remedied on appeal by a challenge regarding the effective assistance of counsel. For a judge to maintain that the only solution to an attorney-client conflict is an appeal based on ineffective assistance is destructive of fundamental due process. By incorrectly limiting the defendant's arguments, the suggestion risks undermining the defendant's rights on appeal and on retrial after an appeal. See *Taylor v. Reno*, 164 F.3d 440, 446 (9th Cir.1998) (addressing, but rejecting on the facts, the argument that the judge's com-

ments might violate due process by lulling the defendant out of pursuing a particular challenge).

For these reasons, the District Court abused its discretion in denying a reasonable continuance for a substitute counsel to prepare for trial.

B.

[8-10] Under the standards for denying a motion to substitute counsel, the District Court also erred. We review the denial of a motion for substitution of counsel for abuse of discretion. *United States v. Corona-Garcia*, 210 F.3d 973, 976 (9th Cir.2000), cert. denied, 531 U.S. 898, 121 S.Ct. 231, 148 L.Ed.2d 165 (2000). In reviewing a denial of substitution of counsel, we consider (1) the timeliness of the motion; (2) the adequacy of the trial court's inquiry; and (3) the extent of conflict created. *Id.*

[11] With regard to timeliness, as mentioned above, the District Judge failed to adequately balance Nguyen's Sixth Amendment rights against any inconvenience and delay from granting the continuance. *Moore*, 159 F.3d at 1160. In fact the District Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The mere fact that the jury pool was ready for selection or even that the jury was ready for trial does not automatically outweigh Nguyen's Sixth Amendment right.

[12] The District Judge also failed to conduct a sufficient inquiry into Nguyen's request. For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant "privately and in depth," *Moore*, 159 F.3d at 1160, and examine available witnesses, *Gonzalez*, 113 F.3d at 1028. The District Judge did neither here. Al-

TELL IANE KERR

NO

U.S. v. ADELZO-GONZALEZ
 Cite as 268 F.3d 772 (9th Cir. 2001)

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dant's right to counsel. U.S.C.A. Const. Amend. 6.

7. Criminal Law §641.10(2)

Before ruling on a motion to substitute counsel due to an irreconcilable conflict, a district court must conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concern, and the inquiry must also provide a sufficient basis for reaching an informed decision.

8. Criminal Law §641.10(2)

Before ruling on a motion to substitute counsel due to an irreconcilable conflict, the district court may need to evaluate the depth of any conflict between defendant and counsel, the extent of any breakdown in communication, how much time may be necessary for a new attorney to prepare, and any delay or inconvenience that may result from substitution.

9. Criminal Law §641.10(2)

While open-ended questions are not always inadequate for a district court to rule on a motion to substitute counsel due to an irreconcilable conflict, in most circumstances a court can only ascertain the extent of a breakdown in communication by asking specific and targeted questions.

10. Criminal Law §641.10(2)

Where defendant's attorney opposed defendant's motion to substitute counsel, district court should have stayed proceedings and appointed separate attorney to advise and represent defendant as to inquiries necessary for court to rule on motion.

* The Honorable Susan Illston, United States District Judge for the Northern District of

11. Criminal Law §641.10(2)

The fact that a motion to substitute counsel was made on the eve of trial alone is not dispositive of issue of whether motion was untimely.

Phillip A. Trevino, Law Offices of Phillip A. Trevino, Beverly Hills, California, for the defendant-appellant.

John S. Gordon and Michael S. Lowe, Assistant United States Attorneys, Los Angeles, California, for the plaintiff-appellee.

Appeal from the United States District Court for the Central District of California; Carlos R. Moreno, District Judge, Presiding. D.C. No. 98-0790-CRM.

Before: Before: HUG and B.
 FLETCHER, Circuit Judges, and
 ILLSTON, District Judge.*

ILLSTON, District Judge:

Carlos Adelzo-Gonzalez appeals his conviction following a plea of guilty to criminal charges of hostage taking, transporting illegal aliens, and harboring illegal aliens. At issue is whether the district court abused its discretion in denying Adelzo-Gonzalez's repeated requests for appointment of substitute counsel. We conclude that the district court did not make an adequate inquiry and failed to recognize the material breakdown in trust and communication between defendant and his court-appointed attorney. Despite clear indications of an irreconcilable conflict between defendant and his attorney, the district court denied Adelzo-Gonzalez's requests for a new attorney on three occa-

California, sitting by designation.

WILSON v. MINTZES

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Cite as 761 F.2d 275 (1985)

counsel's loyalty to his own interests rather than those of his client adversely affected his performance in terms of appearance before the jury as well as his tactical conduct of the case.

[21] Second, in *Cronic*, 104 S.Ct. at 2047, the Court has reaffirmed that no specific showing of prejudice is required when an accused is deprived of his sixth amendment right to effective cross-examination. *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1105, 1111, 39 L.Ed.2d 347 (1974). Prejudice need not be shown since denial of such a right is of such magnitude that "no amount of showing of want of prejudice would cure it." *Smith v. Illinois*, 390 U.S. 129, 131, 88 S.Ct. 748, 749, 19 L.Ed.2d 956 (1968) (quoting *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.Ed.2d 314 (1966)). If prejudice is presumed when a trial judge denies a defendant the right of cross-examination, reason dictates that such presumption be of equal force when a trial judge unreasonably refuses a defendant's request to remove counsel who flatly refuses to cross-examine a witness because of his running feud with the judge.²⁰ Therefore, even if a showing of prejudice were a prerequisite to reversal, the conflict of interest between counsel and client along with counsel's flat refusal to cross-examine a witness require a presumption of prejudice in this case.

III.

We establish no novel right or theory of constitutional law, but rely on tried and true principles as old as the document we expound. The Court has recognized that "Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation...." *Morrison*, 449 U.S. at 364, 101 S.Ct. at 667. The accused has demonstrated that his right to choose the counsel to present his defense was unconstitutionally abridged. There-

fore, having concluded that the trial court's decision was arbitrary and unreasonable, we hold that appropriate respect for Wilson's right of choice can be accorded only by directing the district court to grant the writ.

Accordingly, the judgment of the district court is REVERSED and the case is REMANDED to the district court with instructions to grant the writ of habeas corpus.

ENGEL, Circuit Judge, dissenting.

I respectfully dissent.

In our original opinion we stated "the issue presented is whether the petitioner was deprived of effective assistance of counsel when the trial judge denied petitioner's repeated requests for substitute counsel." *Wilson v. Mintzes*, 733 F.2d 424, 425 (6th Cir.1984). When the Supreme Court vacated that judgment and remanded for our consideration in light of *Strickland v. Washington*, — U.S. —, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the majority shifted ground away from the effective assistance issue and moved toward the Sixth Amendment denial of an accused's right to counsel of his choice. The majority now asserts that "Wilson has not claimed that, and the parties have not argued whether, counsel was constitutionally ineffective. The [state] trial judge, however, apparently believed that counsel's competency was implicated." Actually, the issue as presented to the Michigan Court of Appeals was whether the trial court erred in "not granting a mistrial or holding a full hearing on the competency issue." The same issue was stated in Wilson's petition filed in the district court as "whether the trial court erred in failing to hold a full evidentiary hearing on the matter of competency of defense counsel." Wilson's brief to this court reflects a similar shift in emphasis from that in the state court and in his habeas petition in the district court:

under the standards set out in Part I B above to be entitled to reversal based on denial of his motion for substitution of counsel.

20. While deprivation of his sixth amendment right to effective cross-examination may entitle an accused to a presumption of prejudice, an accused must establish an abuse of discretion

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UNITED STATES of America,
Plaintiff-Appellee,

v.

Robert D'AMORE, Defendant-Appellant.

No. 94-10091.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 16, 1995.

Decided June 12, 1995.

Government sought to revoke defendant's probation. The United States District Court for the District of Nevada, Lloyd D. George, Chief Judge, denied defendant's motion to substitute private for appointed counsel and revoked probation. Defendant appealed. The Court of Appeals, William A. Norris, Circuit Judge, held that: (1) district court made inadequate inquiry before denying defendant's motion to substitute counsel; (2) evidence showed substantial breakdown of communications between defendant and appointed counsel; and (3) denial of motion was not warranted on grounds of untimeliness.

Reversed and remanded; order of revocation vacated.

1. Criminal Law §1152(1)

District court's denial of motion to substitute counsel is reviewed for abuse of discretion; such discretion must be exercised, however, within limitations of Sixth Amendment, which grants criminal defendants qualified constitutional right to hire counsel of their choice. U.S.C.A. Const.Amend. 6.

2. Criminal Law §641.10(1)

Criminal defendants' constitutional right to hire counsel of their choice is qualified in that right may be abridged to serve some compelling purpose; such compelling purpose may be found when granting motion would lead to delay in proceedings and government's interest in prompt and efficient administration of justice outweighs defendant's need for new counsel to adequately defend himself. U.S.C.A. Const.Amend. 6.

3. Criminal Law §641.5(5), 641.10(1)

Court may override defendant's choice of counsel in order to maintain integrity of judicial system by prohibiting representations that involve conflict of interest or ethically unfit lawyer. U.S.C.A. Const.Amend. 6.

4. Criminal Law §641.10(2), 1166.10(1)

Absent compelling purpose, it is violation of Sixth Amendment to deny motion to substitute counsel and is error that must be reversed, regardless of whether prejudice results. U.S.C.A. Const.Amend. 6.

5. Criminal Law §641.10(2)

When substitution of defense counsel does not threaten any delay in proceedings, there is no reason to deny substitution whether or not defendant has complaints against, or irrevocable conflict with, appointed counsel. U.S.C.A. Const.Amend. 6.

6. Criminal Law §641.10(2)

When granting motion for substitution of defense counsel would require continuance, court must weigh defendant's Sixth Amendment interest against any delay or inconvenience caused by request for substitution, even when request is made at last minute. U.S.C.A. Const.Amend. 6.

7. Criminal Law §1134(3)

In reviewing district court's denial of late motion to substitute private for appointed counsel, Court of Appeals focuses on considerations of adequacy of district court's inquiry, extent of conflict between defendant and counsel, and timeliness of motion and extent of any inconvenience or delay that would result from granting motion. U.S.C.A. Const.Amend. 6.

8. Criminal Law §641.10(2)

Before district court can engage in measured exercise of discretion, upon defendant's motion to substitute private for appointed counsel, court must conduct inquiry adequate to create sufficient basis for reaching informed decision. U.S.C.A. Const.Amend. 6.

9. Criminal Law §641.10(2)

District court conducted unsatisfactory inquiry prior to denial of defendant's motion

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COUNSEL

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tion was not adequately proven, we need not consider the applicability of California strict liability law.

AFFIRMED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

Carlos ADELZO-GONZALEZ,
Defendant-Appellant.

No. 99-50152.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 5, 2001

Filed Sept. 26, 2001

Defendant plead guilty in the United States District Court for the Central District of California, Carlos R. Moreno, J., to hostage taking, transporting illegal aliens, and harboring illegal aliens and was sentenced to 63 months of imprisonment. Defendant appealed. The Circuit Court, Illston, District Judge, sitting by designation, held that the district court abused its discretion in denying defendant's motions for substitution of counsel.

Reversed, vacated, and remanded.

1. Criminal Law §1134(3)

Claim of ineffective assistance of counsel is generally inappropriate on direct appeal. U.S.C.A. Const.Amend. 6.

2. Criminal Law §1134(3)

There are two exceptions to general rule against raising ineffective assistance of counsel claims on direct appeal: (1) when the record on appeal is sufficiently developed to permit review and determination of the issue; and (2) when the representation is so inadequate that it obviously denies a defendant his Sixth Amendment right to counsel. U.S.C.A. Const.Amend. 6.

3. Criminal Law §1134(3)

Where defendant raised arguments that district court erred each time it denied his motions for appointment for substitute counsel and deprived him of his Sixth Amendment right to counsel as two separate grounds for appeal, Court of Appeals would treat arguments as interrelated and review only decision to deny substitute counsel. U.S.C.A. Const.Amend. 6.

4. Criminal Law §1152(1)

Court of Appeals reviews a district court's denial of a motion for substitution of counsel for abuse of discretion.

5. Criminal Law §1158(1)

District court's factual findings are reviewed on appeal under the clearly erroneous standard.

6. Criminal Law §641.10(2)

District court abused its discretion in denying defendant's motions to substitute counsel; court's open-ended questions were inadequate to probe into nature of attorney-client relationship after defendant explained his attorney used bad language and threatened to "sink him for 105 years so that he wouldn't be able to see his wife and children," extent of conflict interfered with attorney's ability to provide representation as shown by his calling defendant a liar and defendant stating he would rather represent himself, and any delay in substituting counsel was outweighed by defen-

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to hold a second hearing, "fairminded jurists" could conclude that the trial judge's inquiry was still adequate and that the extent of the conflict did not mandate the substitution of counsel. *Harrington v. Richter*, —U.S. —, —, 131 S.Ct. 770, 786, 178 L.Ed.2d 624 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004)) (internal quotation marks omitted).

31 Petitioner does not assert that his reasons for requesting a second hearing for substitute counsel differed in any respect from the complaints he made during the prior *Marsden* hearing. (See Pet. 10, 50–51.)

*24 Furthermore, "fairminded jurists" could also conclude that the trial judge's observations did not require him to "delve deeper into the nature of [Petitioner's] relationship with the appointed counsel." *United States v. Adelzo-Gonzalez*, 268 F.3d 772, 778 (9th Cir.2001). Although Petitioner expressed dissatisfaction with counsel's performance while he was on the stand, (see Lodgment 24, at 246–47, 275–78), "there were [no] clear indications of serious discord and friction between [Petitioner] and his attorney." *Adelzo-Gonzalez*, 268 F.3d at 778 (emphasis added). Petitioner's disapproval of his attorney's conduct pales in comparison to the threats, foul language, and insults on the part of counsel in *Adelzo-Gonzalez*. See *id.* at 774–76, 778–80 (holding that trial judge needed to inquire further into defendant's allegations concerning irreconcilable conflict.) Furthermore, "[t]he fact that [P]etitioner testified at his trial is evidence that the lines of communication between [him] and [counsel] were open[.]" *Shepard v. Chavez*, No. 10–3249, 2012 WL 4038446, at *29 (E.D.Cal. Sept.12, 2012), especially given Petitioner's acknowledgement that counsel had informed him beforehand that taking the stand would be unwise. (See Lodgment 24, at 211–12.) Thus, it was not unreasonable to conclude that the trial judge's observations, along with Petitioner's complaints during the first *Marsden* hearing, provided a "sufficient basis" to make an informed decision that Petitioner and counsel did not have an irreconcilable conflict. See *Smith*, 282 F.3d at 764 (quoting *McClendon*, 782 F.2d at 789).

Additionally, "fairminded jurists" could easily conclude that Petitioner's request, which was made after the close of evidence, was untimely. See *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir.2009). Therefore, AEDPA's

deferential standard of review bars habeas relief on Ground Fifteen.

3. Petitioner's Other Claims of Ineffective Assistance of Counsel

Ground Sixteen alleges that trial counsel was ineffective because he "concealed evidence, refused to investigate evidence, refused to present expert witnesses, allowed the prosecutor to deceive the court and jury and refused to act as ... [d]efense [c]ounsel as defined in the relevant [G]rounds 1–15 of this [P]etition." (Pet.10, 52.) Petitioner also asserts that defense counsel's closing argument was constitutionally deficient. (See *id.* 52–53.) The Superior Court rejected Ground Sixteen, reasoning that:

In order to establish ineffective assistance of counsel based on failure to 'call additional witnesses' or 'present additional evidence[.]' [P]etitioner must show that his counsel's representation was so deficient that it resulted in a total breakdown of the adversarial process and not just trial tactics. Further[,] [P]etitioner must show that the additional evidence or witnesses would have yielded a more favorable result. The [P]etitioner's writ fails to allege facts or present evidence establishing a prima facie case of habeas relief.

*25 (*Id.* at 3, 5.) As the following analysis demonstrates, the Superior Court's holding was neither contrary to nor an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States.³²

32 Grounds One through Twelve each include specific allegations concerning trial counsel's purported deficient performance. (See Pet. 17–18, 20, 22, 24–25, 27–28, 30, 32, 34, 36, 38, 40–41, 43–44.) The Court considers some of these allegations in the context of the deficient performance analysis, whereas others are addressed in the prejudice discussion. Moreover, defense counsel's closing argument is analyzed in the deficient performance section.

Apart from the allegations in Grounds One through Twelve and the assertion that defense

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mine who was telling the truth, and the trial court gave the proper instruction on how to view expert opinion testimony.

During its case in chief, Dr. Roll again testified for the State. He stated that he interviewed the complainant and conducted a series of psychological tests. Dr. Roll concluded that the complainant suffered from PTSD "consistent with chronic sexual abuse." In addition to repeating several statements by the complainant concerning her fear of her stepfather and her statements regarding sexual abuse by him, Dr. Roll also specifically stated that the complainant's symptoms were consistent with sexual abuse by her stepfather, the defendant Marquez. He found that the complainant suffered from several stressors, but he stated that sexual trauma was the most severe stressor or cause of her symptoms.

Dr. Roll stated that it was not the function of the examining psychologist to determine if an alleged victim was telling the truth, but he testified that it was virtually impossible for the complainant to be faking her symptoms. Dr. Roll also stated that psychologists do not check for external inconsistencies; that is, they do not reference extrinsic sources to determine whether the complainant is lying. Rather, he testified, they check for internal inconsistencies; that is, whether the complainant's story is plausible or whether it is inherently inconsistent.

Dr. Lenssen also testified for the State at trial and concluded from her evaluation that the complainant suffered from PTSD. She stated that although several stressors may be present, the cause could be traced, and she believed that the complainant's symptoms could be traced to sexual abuse. Unlike Dr. Roll, she did not directly inculcate Marquez. She did recount, however, some of the complainant's statements regarding sexual abuse by her stepfather.

Dr. Lenssen also testified that in her opinion, the complainant was not fabricating her story. As in *Alberico*, however, she testified that the PTSD diagnosis is not a credibility assessment and that it makes a difference whether the complainant is tell-

ing the truth. The qualifications of both Dr. Roll and Dr. Lenssen were not challenged.

Dr. Siegel, also a clinical psychologist, testified for the defense at trial. While he did not contest the other expert witnesses' diagnoses that the complainant exhibited PTSD symptoms, he stated that the complainant suffered from several stressors, all of which cumulatively could have caused PTSD. He also testified that a PTSD diagnosis depends in large part upon what the complainant is saying and whether she is telling the truth. In addition, Dr. Siegel stated that DSM III-R contains a cautionary note about its use in a forensic setting.

III. ISSUES

A. Arguments for the Defense

On appeal, both defendants make similar arguments against the admission of PTSD testimony. They claim that the State failed to lay the proper scientific foundation for its admission, arguing that PTSD evidence is not generally accepted as a reliable means for determining whether sexual abuse has occurred. Both defendants advocate the continued use of the *Frye* test as a predicate for the admission of expert opinion testimony.

The defendants also argue that PTSD evidence is not relevant because the experts' testimony went beyond the scope of what their expertise allows. They concede that PTSD testimony may be admitted if its purpose is to explain the victim's delayed reporting of the incident or her initial denial or subsequent recantation of the incident. They maintain, however, that an expert may not testify that an alleged victim's symptoms of PTSD are consistent with those exhibited by someone who has been sexually abused because such testimony lacks an objective scientific foundation. They assert that PTSD evidence regarding causation was improper because PTSD was not intended to be used as a forensic tool in a court of law. In addition, the defendants claim that such testimony amounts to improper evidence regarding the complain-

tunity to secure counsel of his own choice. U.S.C.A. Const.Amend. 6.

3. Criminal Law ¶641.10(1)

When a court unreasonably denies defendant counsel of choice, denial can rise to level of a constitutional violation. U.S.C.A. Const.Amend. 6.

4. Constitutional Law ¶268.1(5)

Denial of an accused's right to counsel of his choice may so offend concept of the basic requirements of a fair hearing as to amount to a denial of due process of law. U.S.C.A. Const.Amend. 5, 6, 14.

5. Criminal Law ¶641.10(1)

When an accused is financially able to obtain an attorney, choice of counsel to assist him rests ultimately in his hands and not in the hands of the state. U.S.C.A. Const.Amend. 6.

6. Criminal Law ¶641.10(1)

While an accused's right to choose counsel to assist him at trial is an essential component of the Sixth Amendment right to assistance of counsel, such right is not absolute. U.S.C.A. Const.Amend. 6.

7. Criminal Law ¶641.10(2)

When an accused seeks substitution of counsel in midtrial, he must show good cause such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict with his attorney in order to warrant substitution. U.S.C.A. Const.Amend. 6.

8. Criminal Law ¶641.10(2)

Consideration of motions to substitute counsel in midtrial requires a balancing of accused's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice. U.S.C.A. Const.Amend. 6.

9. Criminal Law ¶641.10(1)

A trial court, acting in the name of calendar control, cannot arbitrarily and unreasonably interfere with a client's right to be represented by the attorney he has selected. U.S.C.A. Const.Amend. 6.

10. Criminal Law ¶593

Whether a continuance is appropriate in a particular case depends on the facts and circumstances of that case, with the trial judge considering the length of delay, previous continuances, inconvenience to litigants, witnesses, counsel and the court, whether delay is purposeful or is caused by the accused, the availability of other competent counsel, the complexity of the case, and whether denying continuance will lead to identifiable prejudice.

11. Criminal Law ¶1166.11(5)

Evidence of unreasonable or arbitrary interference with an accused's right to counsel of his choice ordinarily mandates reversal without a showing of prejudice. U.S.C.A. Const.Amend. 6.

12. Criminal Law ¶586, 641.10(2)

Motions for continuance and order to substitute counsel are directed to sound discretion of trial judge and will be reversed only for an abuse of discretion.

13. Criminal Law ¶641.10(2)

Trial judge, after questioning competence of petitioner's counsel and provoking counsel into acts inconsistent with his duty of loyalty to his client, acted unreasonably in failing to heed petitioner's expression of dissatisfaction. U.S.C.A. Const.Amend. 6.

14. Criminal Law ¶641.13(1)

In order to obtain relief for ineffective assistance of counsel, an accused must show first that counsel's representation fell below an objective standard of reasonableness, and that counsel's performance prejudiced accused's defense.

15. Criminal Law ¶641.5, 641.13(1)

In assessing prejudice arising from alleged ineffective representation, question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt; however, when counsel labors under a conflict of interest, prejudice may be presumed.

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whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate." *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir.1970).

There is no question in this case that there was a complete breakdown in the attorney-client relationship. By the time of trial, the defense attorney had acknowledged to the Court that Nguyen "just won't talk to me anymore." In light of the conflict, Nguyen could not confer with his counsel about trial strategy or additional evidence, or even receive explanations of the proceedings. In essence, he was "left to fend for himself," *United States v. Gonzalez*, 113 F.3d 1026, 1029 (9th Cir.1997), in violation of his Sixth Amendment right to assistance of counsel. Nonetheless, the District Judge ignored the problems between Nguyen and his attorney, commenting that Nguyen's "strike" was not ground for a continuance, explaining to Nguyen that "the Federal Public Defenders provide very good representation to defendants," and remarking that he was "totally comfortable" with the public defender representing Nguyen. The issue in this case is the attorney-client relationship and not the comfort of the court or the competency of the attorney.

Finally, the District Judge commented that any problems with his decision not to grant a continuance for the substitution of counsel could be remedied on appeal by a challenge regarding the effective assistance of counsel. For a judge to maintain that the only solution to an attorney-client conflict is an appeal based on ineffective assistance is destructive of fundamental due process. By incorrectly limiting the defendant's arguments, the suggestion risks undermining the defendant's rights on appeal and on retrial after an appeal. See *Taylor v. Reno*, 164 F.3d 440, 446 (9th Cir.1998) (addressing, but rejecting on the facts, the argument that the judge's com-

ments might violate due process by lulling the defendant out of pursuing a particular challenge).

For these reasons, the District Court abused its discretion in denying a reasonable continuance for a substitute counsel to prepare for trial.

B.

[8-10] Under the standards for denying a motion to substitute counsel, the District Court also erred. We review the denial of a motion for substitution of counsel for abuse of discretion. *United States v. Corona-Garcia*, 210 F.3d 973, 976 (9th Cir.2000), cert. denied, 531 U.S. 898, 121 S.Ct. 231, 148 L.Ed.2d 165 (2000). In reviewing a denial of substitution of counsel, we consider (1) the timeliness of the motion; (2) the adequacy of the trial court's inquiry; and (3) the extent of conflict created. *Id.*

[11] With regard to timeliness, as mentioned above, the District Judge failed to adequately balance Nguyen's Sixth Amendment rights against any inconvenience and delay from granting the continuance. *Moore*, 159 F.3d at 1160. In fact, the District Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The mere fact that the jury pool was ready for selection or even that the jury was ready for trial does not automatically outweigh Nguyen's Sixth Amendment right.

[12] The District Judge also failed to conduct a sufficient inquiry into Nguyen's request. For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant "privately and in depth," *Moore*, 159 F.3d at 1160, and examine available witnesses, *Gonzalez*, 113 F.3d at 1028. The District Judge did neither here. Al-

Dewayne S. Stevenson

District Court abused its discretion

In denying Mr. Ramirez an Inquiry
into his Dissatisfaction of his
Counsel and motions; refusal to file his
AFFIDAVIT

/

I wanted
to call
all the
psychiatrists
to cross
examine
all the

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16. Criminal Law ¶641.13(8)

The two-prong performance prejudice *Strickland* test for determining effectiveness of counsel is not applicable to cases involving choice of counsel.

quest for substitution of counsel, the conflict of interest between counsel and petitioner along with counsel's flat refusal to cross-examine a witness required a presumption of prejudice.

17. Criminal Law ¶641.13(8)

Although there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt, such errors are cognizable without any showing of effect on the outcome of the proceeding when the right asserted is entitled to constitutional protection apart from objective fairness proceeding; therefore, the prejudice prong of *Strickland* has no applicability to counsel of choice cases since, unlike the right to counsel of choice, the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. U.S.C.A. Const.Amend. 6.

John R. Minock (court-appointed), Detroit, Mich., for petitioner-appellant.

Frank J. Kelley, Atty. Gen. of Michigan, J. Peter Lark, Lansing, Mich., for respondent-appellee.

Before ENGEL, MARTIN and CONTIE, Circuit Judges.

CONTIE, Circuit Judge.

On May 4, 1984, we reversed the district court's denial of petitioner Roy Wilson's petition for a writ of habeas corpus and remanded to the district court with instructions that the writ be granted. *Wilson v. Mintzes*, 733 F.2d 424 (6th Cir.1984). The Supreme Court of the United States granted respondent Mintzes' petition for a writ of certiorari, vacated our judgment and remanded the case for consideration in light of *Strickland v. Washington*, 466 U.S. —, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).¹ For the reasons that follow, we reaffirm our earlier judgment.

18. Criminal Law ¶593, 641.10(2)

Prejudice to accused is but one factor to be considered by trial judge, and a continuance or substitution of counsel may properly be granted in absence of prejudice and may properly be denied despite its presence.

19. Criminal Law ¶641.10(1)

Accused who has been improperly deprived of counsel of his choice need not show prejudice resulting from trial court's denial thereof in order to be entitled to relief. U.S.C.A. Const.Amend. 6.

20. Criminal Law ¶1163(2)

Prejudice is presumed only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance.

21. Criminal Law ¶1163(2)

Even if a showing of prejudice were a prerequisite to reversal for denial of re-

I.
Petitioner Wilson contended in seeking a writ of habeas corpus that the trial judge's failure to grant a continuance to allow him to retain substitute counsel when he expressed dissatisfaction with the conduct of his counsel at trial deprived him of his sixth amendment right to counsel. We found that counsel's conduct at trial constituted good cause to warrant substitution of counsel and that Wilson was prejudiced by counsel's attempt to remove himself from the case in front of the jury and by his refusal to cross-examine the officer in charge of the investigation.²

1. *Mintzes v. Wilson*, — U.S. —, 105 S.Ct. 317, 83 L.Ed.2d 255 (1984).

2. For a statement of the facts and procedural history of the case, see our earlier opinion at 733 F.2d 424.

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unwanted counsel, "represents" the defendant only through a tenuous and unacceptable legal fiction." *Faretta v. California*, 422 U.S. 806, 821 [95 S.Ct. 2525, 2584, 45 L.Ed.2d 562] (1975). In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition.

Id. at 1075 (quoting *Osborn*, 861 F.2d at 629); see also *Cuyler v. Sullivan*, 446 U.S. 335, 349-50, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980) ("[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief."); *Holloway v. Arkansas*, 435 U.S. 475, 490-91, 98 S.Ct. 1173, 1181-82, 55 L.Ed.2d 426 (1978).

Nevertheless, the Supreme Court in fleshing out the contours of the Sixth Amendment right to counsel has held that it does not guarantee "a right to counsel with whom the accused has a 'meaningful attorney-client relationship.'" *Morris v. Slappy*, 461 U.S. 1, 3-4, 103 S.Ct. 1610, 1612-13, 75 L.Ed.2d 610 (1983); see *id.* at 13-14, 103 S.Ct. at 1617-18. To understand the dimensions of this limitation, one must look at the facts of that case.²

In *Morris*, an indigent defendant had a unilateral falling out with his attorney caused not by any identifiable objective misconduct by the attorney, but by (1) Morris's dissatisfaction with a switch from one public defender to another, (2) Morris's opinion that the new public defender had not had enough time to prepare for trial, and (3) by the second public defender's assessment that Morris had no "defense to [the] charges." See 461 U.S. at 8, 103 S.Ct. at 1614. Because of this unilateral falling out, Morris refused to participate in his own defense. In affirming the denial by the district court of Morris's petition for a writ of habeas corpus, the Court rejected Morris's claim that a defen-

dant has the right to a certain "rapport" with his attorney. *Id.*; see *United States v. Schaff*, 948 F.2d 501, 505 (9th Cir.1991).

[6] Moreover, an indigent defendant does not have the right to "an attorney he cannot afford." *Caplin & Drysdale v. United States*, 491 U.S. 617, 624, 109 S.Ct. 2646, 2651, 105 L.Ed.2d 528 (1989) (quoting *Wheat v. United States*, 486 U.S. 153, 159, 108 S.Ct. 1692, 1697, 100 L.Ed.2d 140 (1988)).

III

A.

[7] If the Sixth Amendment itself protects an accused from a lawyer with a traditional conflict of interest, and from a lawyer who is asleep, completely disinterested, or so unprepared that his appearance is merely pro forma, surely it must protect the indigent from an appointed lawyer who calls him to his face a "stupid nigger son of a bitch" and who threatens to provide substandard performance for him if he chooses to exercise his right to go to trial. An indigent defendant may not be entitled to a meaningful relationship as described in *Morris*, but a verbal assault manifesting explicit racial prejudice and threatening to compromise the client's rights far exceeds and transcends the facts and holding in that case. In our judgment, such a verbal assault is irreconcilable with (1) the duty of loyalty owed a client by his attorney, (2) the responsibility of providing meaningful assistance, and (3) the role of "guiding hand" described in *Powell* by Justice Sutherland. All advice, assistance, and guidance provided after such an outburst would be fatally suspect, as would the "willingness" of a defendant to follow the attorney's lead. Such a disrespectful and inappropriate eruption would signal and be tantamount to (unless somehow cured) a "total lack of communication" far exceeding the parameters of any duty on the part of counsel to deliver to his client a "pessimistic prognosis" of his legal position. *United*

2. In his opening brief Mr. Frazer's counsel relied heavily on our opinion in *Slappy v. Morris*, 649 F.2d 718 (9th Cir.1981) without bringing to our attention that we were explicitly overruled by the Supreme Court on the point for which he cited it.

Not until the government cited the Supreme Court's overruling opinion did counsel acknowledge the subsequent history of this case. Counsel's use of precedent in this fashion is most disconcerting.

Verbal
Assault
Fatally suspect

of New Mexico vs. Albert Ramirez
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1 my defense but like I said in the past, I've asked to fire him, I've asked to get a new attorney
2 which I can't, I can't afford it I'm poor, I have no help from my family just basically to get my
3 hygiene and that's it and-and also I, um, I asked for a new attorney, I asked for a private
4 investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I
5 asked for several motions which I don't know if they were, they were even filed or if they were
6 denied, I've asked, uh, I don't know if Mr. Cosby I just feel like maybe I-I have a big mouth and
7 I sit to-to open my big mouth and say things and I don't know if I made him angry or upset or
8 frustrated or what I've done but for some reason I don't know if he's gonna lose this case
9 because it's a weak case or if it's intentionally or accidental or I'm just paranoid or ...

10 DT: Mr. Ramirez.

11 AR: ... but-but something Your Honor for that ...

12 DT: The issues that you wanted to be on the record you've listed them and I think you've listed them
13 well, uh, thank you for all the truth of the situations that-that you face, uh, and-and-and it's tough
14 to understand everything even if you're in the system, but I think that you've made a record ...

15 AR: Sorry Your Honor.

16 DT: ... and the Appellate Court will see that record and-and therefore that's-that's what you needed to
17 do and that's what you've done.

18 AR: Okay. Thank you Your Honor I had more, uh, uh, things to say but thank you for that time I'll-
19 I'll just say them on my appeals, I had more things that I wanted to say but thank you.

20 DT: Okay thank you sir. Alright (9:25:58)

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1 say and you're saying some more stuff right now that is on the record. The part that I'm gonna
2 restrict is that you're not gonna go into this area at this juncture in this trial.

3 AR: It's-it's, uh, relevant to the case and also I didn't get asked about how, about my schooling, like I
4 thought it was maybe it was important to the Jury about how I was doing in school and before
5 how this led up to it and I didn't get asked about why I broke the window to my mom's
6 boyfriend's car, what happened that day, who was there, I didn't get asked, um, several things ...

7 DT: See those are not relevant to the issue that we are here about.

8 AR: How come they've used it in court? He brought it up. The prosecution said I broke a window
9 but it's not relevant? It's relevant if the prosecution used it but I can't explain why it's relevant
10 Your Honor and you all a very educated man and I'm a nobody and I'm real low, uh, low IQ but
11 I guess in my life and I feel like I'm not having a fair trial because if-if I would have known that
12 I didn't have to get asked a question about me being sexually assaulted by my neighbor and
13 (inaudible) I would have just said it myself but I just had respect for the courts and for you for
14 Matthew telling everybody I wasn't gonna just throw it out there like that.

15 DT: You're-you're ...

16 AR: But I don't feel it's fair.

17 DT: You have, you've explained this issue and you've been through psychological evaluations and
18 we've had two for sure ...

19 AR: Okay.

20 DT: ... did you explain that to them?

21 AR: Yes. Yes sir. Another thing, thank you for letting me speak, I greatly appreciate it and God
22 bless you all. I've let Maxine Schwartz know that I was sexually assaulted. It's on record, she

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1 knows. I've told her what happened by my neighbor, by my mom's boyfriend, I told Maxine
2 Schwartz that's why I was hurt that I didn't get to have that as my defense today and also ...

3 DT: And who is Maxine Schwartz.

4 JC: She's the one, uh, the original determination wasn't competent.

5 AR: And also ...

6 JC: Psychologist.

7 AR: ... Dr. Burness I'm not gonna say whether she asked me or not but like I said I was assaulted over
8 there and battered and they sent me back and found me competent which isn't, wasn't good, was
9 not prop-professional and also Dr. Fink I tried to explain this to Dr. Fink that I was sexually
10 assaulted and-and Dr. Fink stated well that doesn't have anything to do with your case. He said
11 your murdered somebody and that doesn't have nothing to do with your case and he said also he
12 said even if you were incompetent my job as working for the State of New Mexico is to find you
13 competent and whether you get to the hospital or not they're still gonna find you competent
14 because that's the job the State of New Mexico has and I said well I explained everything and I
15 was, I' not get, I'm not, it's not fair and I think it's relevant.

16 JC: Okay there is ...

17 AR: If your child was ever assaulted would you want ...

18 JC: Can-can we finish please? Go ahead but there is record that you discussed with psychologists
19 something about being sexually assaulted in the report and I hesitate to have to do this but in the
20 report the psychologist says that he's malingering and fabricating and that the allegations of
21 sexual abuse is I believe that her term, highly suspect. So it was brought up, it was discussed, it
22 was not, um, commented much upon except when the report that the person said because of his

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- 1 JC: Well you're-you're getting your chance sir now.
- 2 AR: I would like to speak.
- 3 JC: You are. You're, just a second ...
- 4 DT: Well I'll give you 5 minutes to tell the story.
- 5 AR: I don't want him. I don't, huh?
- 6 DT: I'm gonna give you 5 minutes to tell this story.
- 7 AR: Tell what story?
- 8 JC: About your sexual problems ...
- 9 DT: That your sexual ...
- 10 AR: Okay. I got 5 minutes.
- 11 JC: Sit back, sit back.
- 12 AR: I'm not acting up. Okay ...
- 13 DT: Sit, sit for it.
- 14 AR: I'm not, there ain't nobody, I'm peaceful like everybody else.
- 15 DT: They're just doing their job and you're, and you're gonna make a statement, I'm gonna give you
- 16 5 minutes and you need to understand that this is the statement ...
- 17 AR: Yes sir.
- 18 DT: ... that will go on the record.
- 19 AR: Yes sir.
- 20 DT: Because the court is of the opinion that it's an inappropriate thing to bring before the jury and
- 21 I'm not gonna let you do it.
- 22 AR: Okay.

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1 DT: It is highly suspect for sure in my opinion.

2 AR: I, uh ...

3 DT: And (inaudible) against you're done so say what you want to say.

4 AR: Okay. Mr. Cosby stated that supposedly a psychologist/psychiatrist stated that I was malingering
5 or they didn't believe me which in my opinion when he said that, which it went against me and
6 on the record, okay if there's a psychiatrist/psychologist, Maxine Schwartz which I told and she
7 believed me, um, that would be relevant and that would help my case which would make it
8 allegedly true and what he said about somebody saying that I was malingering makes me look
9 bad but why would he say that Dr. Maxine Schwartz believed me when I told her about the
10 sexual abuse and it makes me right. And also about foster care okay I never told nobody, I was
11 embarrassed. The only person I told was my mother and about this I was about, when
12 (inaudible) done this to me he would give me beers so I started drinking with him and then later
13 on I drunk a lot of beers with him, and, um, I was 16 it was the summer time and, uh, he, uh,
14 tried to kiss me and I told him no and, uh, he got in my face and he threatened to-to punch me, he
15 threatened to hit me and I-I didn't want to get hit, I was scared. So I said okay. Then, uh, he
16 forced me to give him oral sex which I did, which only lasted maybe 2 to 3 minutes at the most
17 and then it was done, it was right in the living room, I was sitting on the couch, he was standing
18 in right in front of me and I did it and he told me not to say nothing but I told my mom and my
19 mom asked him, he denied it. Well then later on about a month later he-he did it again and I
20 told my mom and she said, uh, she was gonna call the cops and-and, um, they got in an argument
21 and I guess he unplugged the phone and they were talking and then my mom sent me to my room

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 and then nothing ever happened. My mom just said I talked to him, I talked to him and-and that
2 was it.

3 DT: (inaudible)

4 AR: And-and-and she told me that she said that she told him that if I ever said anything about him
5 hitting me or any sexual abuse that she was gonna press charges and that I was gonna give, I was
6 gonna have to tell the police and stuff, well not about that, well about Sam Size. I used to go
7 over there because he used to call me over there and when I was between junior high I used to go
8 over there and I always used to like to drink and smoke weed so in order to get beer, I would go
9 to him and I just went over there and I would drink and, um, I would get a beer or two and he'd
10 give me a beer or two and he tried to, he tried to get with me. He just asked for a hug and then
11 he grabbed my, I can't remember if he grabbed my penis and my butt or both and he tried to put
12 his lips on mine, I told him no back up, you know, and I-I ran away with the, with the beer and
13 then I-I ended up going back one more time and, um, I needed some more beers cause I was with
14 my friends and it was Sunday, I don't remember the date, it was summer time, I was 16, he gave
15 me, I went and I said hey man I-I need some beers and, um, I don't remember exactly what was
16 said but I know he gave me like 7 to 8 beers and he tried the same thing on me and he touched up
17 on me and that's assault, he grabbed my penis and my butt and everything and he always tried to
18 invite me over there but I was scared of him. The reason I was scared of Sam Size to go over
19 there was because he told me when I was a little kid, do not, he told me he said, um, cause I used
20 to hang out at the other neighbor's house and he used to just give me beer free, he wouldn't try
21 nothing on me or anything, he just gave me beer for free, just to hang out, smoke and, uh, Sam
22 told me I don't like him, you shouldn't be hanging out with him because he's always talking crap

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Excerpts from Transcript

1 about me, he says that I-I, uh, he-he's saying that I, uh, I can't, I don't want to say something
2 wrong but he said, and I ain't making this up because I seen it in discovery, this is exact what
3 happened. He told me from his mouth that Michael Morales was talking about him and said that
4 he raped or, uh, raped or had some kind of sex with two young males between 12 and 18 and
5 once he told me this I was really afraid of him because I thought he was gonna try to have sex
6 with me and I was real paranoid because he-he's a big man. So I'd be, I'd watch out for myself
7 but I know it's hearsay but Mike would tell me the same thing and that's why I believed it to be
8 true and whether I can testify to it or not, I mean that's the truth so let it be on the record and ...

9 DT: Right.

10 AR: ... I just feel like, uh, I know whether you all are upset because I withdrew my plea but we
11 wouldn't be here in the first place if I wouldn't have got those extra two and a half years, it's a
12 big headache for me as well.

13 DT: Alright.

14 AR: And, uh, sorry your Honor one more thing is that I feel like it would be fair because this is my
15 life and this is what happened and I, it is relevant. I've told plenty of people in mental health
16 since I've been locked up in prison about being sexually assaulted and they got it written down
17 and they said well we need to get you mental health and I've told them.

18 DT: Right.

19 AR: And-and Dr. Burness ...

20 DT: I've got your story.

21 AR: She just ...

22 DT: I've got your story.

State of New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 AR: I was beat up over there.

2 DT: The court, the court continues to be of the opinion that two things well after hearing the story
3 that it-it's still suspect and I'm not sure it'd be relevant.

4

5 10/10/13 3:24:59 -3:25:49

6 UF: Well as of us, yeah because he had already been having all these issues where he was always
7 thinking somebody was after him. He would talk to himself, he would hear voices, he would.

8

RICKY: A white shirt.

DAN: Tee shirt or pullover?

RICKY: Uh, pullover but it had colored stripes across it. No hat, no nothing. Nothing else.

DAN: Do you remember what kind of shoes he had on?

RICKY: Uh, I didn't ever- they looked, just like tennis shoes to me. I guess.

DAN: Color?

RICKY: White tennis shoes. I didn't really....

DAN: You didn't really pay attention to his shoes.

RICKY: Pay attention to his shoes. I just seen him and it happened so quick, you know? But he was going towards- I mean- in the alley he was shoving.... like tucking his shirt in, or....

DAN: He was running when he was doing that?

RICKY: No, he was fixin to start running.

DAN: Kay. Before he started running?

RICKY: Yeah. Right before he started to leave, he- get running. He was like, like he tucked his shirt in, or hiding- you know putting something up front right here. And then he left. That's the last I see of him. So I went back in.

DAN: So he was tucking something in the waistband of his pants?

RICKY: Yeah. And then, he took his, down the alley north, towards 7th Street and then... That's all I seen of him. That's all I seen of him. So I went back inside my building, by the time I walked up front- to my front doors...

DAN: He started running? Was he running?

RICKY: Well, not running- running. But he, you know....

DAN: Like jogging. Kay but, once he started running, was he jogging or just sprinting?

RICKY: Just a jog, yeah, just like a small jog. You know? But he was heading north and heading towards seventh street on the, at the alley. That's the direction that he was going.

*leading
no he was walking about
to run*

*only said
Not running*

*he was
leading*

✓

GRACE: Like, like a polo or something, you know? Not no buttons or anything else like that...

AGUILAR: Right... like a tee-shirt.

GRACE: I just took it in fast...in... and... and ah, but... the green stripes go round.

AGUILAR: Kay...

GRACE: And... and at that point I got scared, you know. I... I...

AGUILAR: With, how much shorter was he then uh... the other guy?

GRACE: I think he was a just a little bit shorter.

AGUILAR: Okay...

GRACE: I, I would say maybe the guy, I'm guessing... I 'm saying, maybe the taller one... maybe... 5'7", 5'8"? I don't know... it was so (inaudible 5.16).

AGUILAR: Okay... kay, but your saying the one that was doing the shooting had a green shirt on...

GRACE: ...yes...

AGUILAR: ... or a shirt on with green stripes.

GRACE: It's a polo with big green stripes on it.

AGUILAR: Kay.

GRACE: Looked like a polo to me, you know. You know, like that type of material you know?

AGUILAR: Right... do you remember...

GRACE: It wasn't a tee shirt.

AGUILAR: It wasn't a tee shirt? Do you remember what kind of pants he had on... or?

GRACE: I don't know... I saw blue jeans but I don't know if it was short or....

AGUILAR: Okay.

GRACE: Shorts or, or jeans.

AGUILAR: What about age, would you say?

4

Record, documents
Evidence, Cases Relevant
TO MY CASE. Thank you

B. Bad acts.

ISSUES.

- ①. Evidence use of battery and assault OF A TRANSPORT OFFICER. IN TRIAL WHEN IT WAS KNOWN TO BE INADMISSIBLE.
- ②. Exhibit 110. rap song letter use to prove element of premeditation to prove 1st degree murder fact it talked about shooting people killing people
3. OVER objection the State called A FIREARMS dealer to testify that defendant had tried to purchase A GUN FROM HIM. IN THE PAST TO SUPPORT ~~THE~~ PREMEDITATION.
4. The State introduced evidence that SOMEONE had broken a front window at the VICTIMS HOUSE AND THIS WAS ALLEGEDLY DONE BY PETITIONER TO SHOW MOTIVE.

prior bad acts
S. Another incident was introduced
to show intent and motive,
that is, that petitioner had
used his crutches to crack
his mother's window.

COPY

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v.

No. CR-2007-434

ALBERT RAMIREZ,

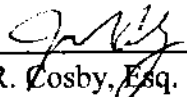
Defendant.

DESIGNATION OF EXHIBITS

Pursuant to Rule 12-212 NMRA, the Defendant designates the following exhibits:

1. State's Exhibits #1 - #110.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant
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U.S. v. SOLIVAN

Cite as 937 F.2d 1146 (6th Cir. 1991)

1147

flame juror's emotions. U.S.C.A. Const. Amend. 6, 14.

8. Criminal Law §723(3), 1171.1(6)

Prosecutor's appeal to community conscience in context of war on drugs and suggestion that drug problem facing jurors' community would continue if they did not convict defendant were so inflammatory in context that no charge could have sufficiently cured prejudice, and thus, statements constituted reversible error. U.S.C.A. Const. Amend. 6.

7. Criminal Law §1163(2, 3)

It is incumbent upon Government to demonstrate that constitutional error, resulting from admission of highly prejudicial evidence or comment, is harmless beyond reasonable doubt; if there is reasonable possibility that evidence or comment complained might have contributed to conviction, then such error cannot be harmless beyond reasonable doubt.

8. Criminal Law §1134(3), 1162

Result of harmless error analysis depends on circumstances of particular case; determining whether error is reversible necessitates examination of entire record.

9. Criminal Law §730(14)

Curative instructions given by district court in trial on drug charges were insufficient and came too late to mitigate negative and highly prejudicial impact of prosecutor's appeal to community conscience, where remarks were among final arguments presented to jurors prior to their deliberation, admonition took place after 20 minute recess occurring immediately following prosecutor's improper statements, and admonition did not sufficiently convey to jury sense of judicial disapproval of remarks to dispel harmful impact of egregious statements. U.S.C.A. Const. Amend. 6.

10. Criminal Law §730(1), 1171.1(2)

When isolated remarks are made in course of long trial and jury is given appropriate cautionary instruction designed to overcome any prejudice that may have been caused, error may be harmless; however, error may be so prejudicial that no

cautionary instruction, however swiftly and forcefully given, can safely eradicate its effect. U.S.C.A. Const. Amend. 6.

11. Criminal Law §730(1)

Both timing and firmness of trial court's admonition are relevant in evaluating whether admonition has been sufficient to mitigate prejudicial error resulting from admission of improper evidence or comment.

Louis DeFalaize, U.S. Atty., Lexington, Ky., Frederick A. Stine, V, Asst. U.S. Atty., Covington, Ky., for plaintiff-appellee.

Robert Alan Rosenblatt, Miami, Fla., for defendant-appellant.

Before KEITH and MILBURN, Circuit Judges, and CONTIE, Senior Circuit Judge.

KEITH, Circuit Judge.

Defendant-appellant, Rosalba Solivan ("defendant") appeals from her March 28, 1990, judgment and sentence resulting from the sale of cocaine. For the following reasons, we REVERSE.

I.

A.

Terry and Lorraine Brown (collectively "the Browns") became Drug Enforcement Administration ("DEA") informants in July 1988, subsequent to Terry Brown's arrest for the purchase of one kilogram of cocaine from Pepe (defendant's former boyfriend) and defendant on March 8, 1988.

On February 13, 1989, while in custody, the Browns began making a series of DEA controlled, tape recorded, telephone calls to defendant. The first call concerned the delivery of three to five kilograms of cocaine to northern Kentucky and the price of the cocaine. During a subsequent telephone conversation, defendant informed the Browns that the price would be \$19,500 per kilogram of cocaine. The series of recorded telephone conversations, which took place over the following weeks, detailed defendant's involvement in the nar-

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:18:24 PM		JURY BEING SEATED IN BOX
1:19:33 PM		#7 WITNESS ROGER GRAU LT. WITH CLOVIS POLICE DEPT. CALLED BY MORRIS / SWORN / DEX
1:20:54 PM		THE MCU WAS ACTIVATED ON JULY 12TH, MADE SURE ALL THE PEOPLE WERE IN THE RIGHT POSITIONS, AND CRIME SCENE WAS BEING HANDLED
1:21:28 PM		SEARCH ITEMS OF CLOTHING IN THE BAG,
1:21:53 PM		WHAT WAS INSIDE THE BAG, "PAIR OF SHORTS" IDENTIFICATION OF DENIM SHORTS
1:23:40 PM		WHAT DID YOU FIND WHEN YOU SEARCHED SHORTS
1:24:57 PM		IDENTIFICATION EXHIBIT 62 "BAG OF BULLETS FROM PANTS POCKET"
1:25:39 PM		OFFERS EXHIBIT 62 / ADMITTED
1:27:48 PM		IDENTIFICATION EXHIBIT 63 "PIECE OF NEWSPAPER FOR HOUSES TO RENT THAT CAME FROM BACK POCKET OF JEANS / OFFERS / ADMITTED
1:28:21 PM		IDENTIFICATION EXHIBIT 64 "WALMART RECEIPT FROM HIS PANTS"
1:28:50 PM		WHAT IS THE DATE ON RECEIPT, WHAT WAS PURCHASED 22 CAL. AMMO
1:29:24 PM		OFFERS EXHIBIT 64 / ADMITTED
1:29:33 PM		IDENTIFICATION EXHIBIT 65 "NM ID CARD FOUND IN HIS POCKET"
1:29:59 PM		OFFERS EXHIBIT 65 / ADMITTED
1:30:06 PM		IDENTIFICATION EXHIBIT 66 "FOOTLOCKER RECEIPT"
1:30:56 PM		OFFERS EXHIBITS 66 / COSBY OBJECTS / COURT
1:31:31 PM		ARE YOU AWARE OF WHAT WAS ON THERE BEFORE
1:31:41 PM	COSBY	OBJECTS / COURT RECEIVES MEMORY IS SUFFICIENT
1:32:01 PM		IDENTIFICATION EXHIBIT 67 "FOOTLOCKER RECEIPT" OFFERS
1:32:34 PM	COSBY	OBJECTS / COURT UNDERSTANDS OBJECTION ADMITTED
1:34:30 PM		IDENTIFICATION EXHIBIT 68 "PHOTO OF CONTENTS" OFFERS
1:35:08 PM	COSBY	OBJECTS, TOOTHBRUSH NOT IN EVIDENCE" COURT OVERRULES / ADMITTED
1:37:08 PM		IDENTIFICATION OF EXHIBIT 69 "PHOTO OF SAME ITEMS"
1:37:45 PM		MOVES EXHIBIT 69 / SAME OBJECTION / ADMITTED
1:37:57 PM		IDENTIFICATION EXHIBIT 70 "PHOTO ID CARD" MOVES / ADMITTED

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
11:51:38 AM	COSBY	XEX - DO YOU HAVE THE FORM WITH YOU, "NO"
11:52:10 AM		IT WAS THROWN AWAY, A CRIME WAS NOT COMMITTED, DID NOT DO A POLICE REPORT, THERE WAS NO CRIME, ONLY HAVE DISPATCH RECORDS JUNE 20TH 2007, READ THE NAME OFF THE FORM
11:53:23 AM		DOES NOT RECALL WHAT KIND OF GUN HE WAS TRYING TO BUY
11:53:37 AM		WITNESS EXCUSED
11:53:56 AM		NOON RECESS REPORT AT 1:30 P.M.
1:30:14 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
1:30:35 PM	CHANDLER	THE STATE ANTICIPATES CALLING TWO TO THREE WITNESSES, WILL PROBABLY BE DONE WITHIN AN HOUR, DON'T BELIEVE ANY OF HIS WITNESSES ARE FACTUAL WITNESSES, HIS WITNESSES ARE GOING TO ATTEMPT TO TESTIFY HEARSAY ETC.
1:31:52 PM	COSBY	JOSE RAMIREZ HIS BROTHER REGARDING RELATIONSHIP WITH HIS STEPFATHER, FURTHER STATES WITNESSES TO BE CALLED AND WHAT THEY WILL TESTIFY ABOUT
1:34:13 PM	CHANDLER	
1:35:06 PM	DFT	STATES HE HAS BEEN HEARING VOICES TELLING HIM TO KILL HIMSELF, CUT HIS WRISTS ETC. OTHER ISSUES THAT MAKE HIM NOT WANT TO LIVE,
1:36:36 PM	COURT	KEEP DOING GOOD, YOUR LAWYER IS NOT MAD AT YOU
1:36:47 PM	CHANDLER	ASKS DEFENSE TO MAKE WITNESSES AVAILABLE TO INTERVIEW
1:37:51 PM	COURT	THE ABILITY OF MR. COSBY TO MAKE AVAILABLE MAY NOT BE WITHIN HIS POWER, I DON'T KNOW IF I CAN DO THAT, THESE PEOPLE HISTORICALLY ON YOUR WITNESS LIST
1:38:39 PM	COSBY	HE ASKED TODAY TO PRODUCE
1:38:51 PM	COURT	DO THE BEST YOU CAN TO TALK TO THEM
1:39:58 PM	COSBY	WITNESSES ARE TRYING TO COORDINATE WORK
1:41:19 PM	DFT	COMMENTS
1:41:58 PM		JURY BEING SEATED IN BOX
1:42:33 PM		#19 WITNESS KEVIN STREINE CALLED BY CHANDLER / SWORN / DEX
1:43:46 PM		FIREARM EXAMINER, BULLETS
1:44:10 PM		EDUCATIONAL BACKGROUND
1:45:21 PM	COSBY	NO OBJECTION AS TO EXPERT
1:45:29 PM	COURT	QUALIFIED AS AN EXPERT
1:45:43 PM		DIFFERENT TYPE FIRED PROJECTILE
1:49:47 PM		RECEIVED FOUR ITEMS 108 - 111

ST. VS ALBERT RAMIREZ CR-07-434

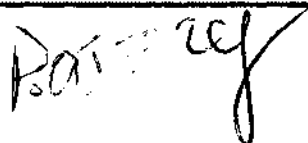
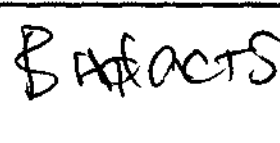
COURTROOM ONE

Time	Speaker	Note
1:50:11 PM		DETERMINATION OF TYPE OF BULLETS "22 CALIBER"
1:50:30 PM		WHAT DOES COPPER WASH LEAD BULLETS
1:51:50 PM		NOT ABLE TO FIND ENOUGH MARKINGS, ON BULLETS
1:52:11 PM		BULLETS WERE SENT TO HIM VIA OMI "OFFICE OF MEDICAL INVESTIGATOR"
1:52:35 PM		IDENTIFICATION EXHIBIT 102B "PACKAGE HAS HIS INITIALS ON IT AND DATE, ITEM 610 WAS NOT THE ONE HE WAS ABLE TO IDENTIFY
1:54:23 PM		HAS NO OPINION AS TO WHO FIRED THE BULLETS, SIMPLY EXAMINED BULLETS
1:54:42 PM		IDENTIFICATION EXHIBIT 62 " LIVE ROUNDS OF COPPER WASH BULLETS
1:55:30 PM	COSBY	XEX - WHAT IS A JACKETED BULLET "IT IS A HEAVIER THICKER MATERIAL" HE TOLD US THEY WERE JACKETED
1:56:23 PM	CHANDLER	OBJECTS
1:56:27 PM	COSBY	THE BULLETS HE RECEIVED WERE COATED OR WASHED THEY WERE NOT JACKETED, THEY HAD COPPER WASH
1:57:09 PM		TWO OF THE THREE BULLETS HE SAW ARE CONSISTENT WITH A 22 LONG RIFLE,
1:57:55 PM		THERE ARE A NUMBER OF CARTRIGES WITH THE 22 CARTRIDGE FAMILY THE LONG AND SHORT BULLETS ARE IDENTICAL
1:58:30 PM		WEIGHT OF BULLETS
1:59:08 PM		WEIGHT OF BULLETS DOES NOT SAY ON THE REPORT
1:59:30 PM		REFERS TO HIS NOTES FOR 608 36.3 GRAINS, FOR 609 37.0 GRAINS
2:00:00 PM		FOR 610 32.6 GRAINS, 611 WAS 28.1 GRAINS
2:00:25 PM		NO COMMENTS ABOUT WHAT OMI DID,
2:00:48 PM		HOW MANY GRAINS EQUAL ONE POUND "DOES NOT KNOW THAT IS WHY HE HAS A CALCULATOR"
2:01:25 PM		THESE BULLETS WAS NOT ABLE TO DISCERN IF THERE WERE ANY RIGHT OR LEFT TURN
2:03:46 PM		ITEMS 608 & 609 HAD WEIGHTS CONSITENT AND ONE DID NOT
2:05:40 PM		BULLETS OMI SENT YOU WERE SAME MANUFACTOR AS THE ONE IN THE EXHIBIT
2:05:59 PM	CHANDLER	REFERS TO EXHIBIT 102A - YOU WEIGHED THAT WHAT IS THE DIFFERENCE BETWEEN 28 AND 28.1 GRAINS, DOES NOT KNOW WHAT PROCEDURES OMI USES
2:08:10 PM		YOU HAVE BEEN QUALIFIED AS AN EXPERT IN THIS CASE, DIFFERENCE BETWEEN COPPER JACKETS AND COPPER WASH

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>3:11:09 PM</u>	COSBY	JOSIE CASILLAS WAS SERVED , LUPE CASILLAS WAS SERVE, AND JOSE RAMIREZ WERE SERVED TO APPEAR, ASKS COURT TO FILE RETURNS OF SUBPOENA'S, MY CLIENT AS EXPRESSED A REQUEST ASKS TO ALLOW TO SPEAK WITH HIS CLIENT FOR A COUPLE OF HOURS AND TO RECESS TILL THE MORNING TO HAVE WITNESSES HERE
<u>3:13:27 PM</u>	COURT	WE WILL BE IN RECESS TILL 9 AM,
<u>3:13:35 PM</u>	CHANDLER	MR. RAMIREZ WAS TRIED ON AUGUST 27, 2013, HIS CLIENT TOOK THE STAND THERE AND HE WAS CONVICTED, IF THEY OPEN THE DOOR THAT THERE IS A MENTAL HEALTH ISSUE, THEY WAVE THE CONFIDENTIALITY ETC.
<u>3:14:57 PM</u>		WE WILL BE CALLING REBUTTAL WITNESSES WITH REGARDING TO HIS COMPETENCY AND MENTAL HEALTH
<u>3:15:15 PM</u>	COURT	WE WILL LEAVE IT AT THAT, I DON'T KNOW THE ANSWER TO THAT,
<u>3:15:40 PM</u>	CHANDLER	IF HE IS OBJECTING TO THAT
<u>3:15:54 PM</u>	COSBY	RESPONDS, AS FAR AS THIS JUDGMENT, THIS CASE IS FROM BATTERING TRANSPORT OFFICERS, WE WAIVED JURY IT WAS A BENCH TRIAL, HE HAS ALREADY SERVED HIS TIME,
<u>3:17:26 PM</u>	CHANDLER	WHEN DFT TAKES STAND I HAVE THE RIGHT TO IMPEACH REGARDING CONVICTION
<u>3:17:44 PM</u>	COSBY	RESPONDS, AN EVENT THAT HAPPENS WHEN HE IS IN CUSTODY
<u>3:18:57 PM</u>	COURT	WILL MAKE DECISION IN THE MORNING, BRING JURY IN
<u>3:20:17 PM</u>		JURY SEATED IN BOX
<u>3:20:54 PM</u>	COURT	INSTRUCTS JURORS THAT THEY WILL BE EXCUSED TILL 9AM
<u>3:21:36 PM</u>	OFF RECORD	
<u>3:22:22 PM</u>	CHANDLER	HAS A COPY OF THE JURY INSTRUCTION
<u>3:22:42 PM</u>	COSBY	PRESENTS HIS INSTRUCTIONS TO COURT
<u>3:23:09 PM</u>	RECESS	

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:25:55 PM	CHANDLER	DO YOU KNOW WHERE DEBRA RAMIREZ IS "NO"
3:26:15 PM		WITNESS EXCUSED
3:27:18 PM		#3 WITNESS LUPE CASILLAS CALLED BY COSBY/ SWORN / DEX
3:27:55 PM		SHE IS ALBERT'S AUNT
3:28:11 PM		ALBERT LIVED WITH HER A WEEK OR TWO BEFORE HE WENT BACK HOME , IN 2007
3:28:41 PM		IT WAS A WEEK TO 10 DAYS BEFORE THE SHOOTING, HE WANTED TO COME TO LIVE WITH ME TO DO SOMETHING DIFFERENT, LIVED WITH ME A MONTH TO A MONTH AND A HALF, WHEN HE LEFT, DO YOU KNOW WHY
3:29:17 PM		HE LEFT I CALLED BY SISTER, HE SAID I AM GOING TO GO, WHAT WAS HIS PHYSICAL SITUATION,
3:30:05 PM		WHEN HE LEFT DID HE HAVE ANYWHERE TO GO, MY SISTER PICKED HIM UP "MY SISTER DEBRA"
3:30:43 PM		WHEN YOUR SISTER PICKED HIM UP ELADIO DID NOT COME WITH HER, SHE DID NOT KNOW ABOUT TRESPASS
3:31:11 PM		ELADIO AND HER SISTER OWNED THAT HOME, SHE TOOK HIM HOME WITH HER
3:31:59 PM		THEY CALL ALBERT "BETO" IT IS SHORT FOR ALBERT
3:32:29 PM		DID SHE SEEM TO HAVE ANY TYPE OF ANGER TOWARD'S ALBERT
3:33:12 PM		WHEN ALBERT CAME BACK HOME , HE WOULD TALK TO A MIRROR <i>MENTAL FITNESS -</i>
3:33:53 PM		WAS HE ABLE TO RUN AROUND,
3:34:19 PM		DID YOU KNOW ABOUT \$500 HE RECEIVED FROM HIS FATHER
3:35:11 PM		HE NEVER TOLD HER HE WAS LOOKING TO KILL MR. ROBLEDO
3:35:24 PM	MORRIS	XEX - YOU WERE NOT AT DEBRA'S HOUSE JULY 12, 2007
3:35:57 PM		WE WOULD TALK ABOUT ONE DAY YEAH, ONE DAY NO
3:36:26 PM		WHERE IS DEBRA TODAY "I HAVE NO IDEA, I AM FROM ROSWELL"
3:36:43 PM		WITNESS EXCUSED
3:36:53 PM		DEFENSE RESTS
3:37:33 PM	COURT	READS RECESS INSTRUCTION
3:38:08 PM	OFF RECORD	
4:32:14 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY,

10/10/2013

15 of 16

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
11:12:30 AM		AMOUNT OF POPULATION ON EARTH ACTUALLY 7 BILLION
11:13:41 AM		IDENTIFICATION EXHIBIT 108 , "LABATORY REPORT"
11:14:04 AM		OFFERS EXHIBIT 108 / COSBY OBJECTS /
11:14:27 AM	COURT	LET ME SEE REPORT
11:14:52 AM	CHANDLER	IT IS NOT A POLICE REPORT, TESTIFIED BASED ON REPORT
11:15:06 AM	COURT	ADMITTED SUBJECT TO OBJECTION OF DEFENSE
11:15:24 AM	COSBY	XEX - WHAT IS YOUR DEGREE
11:16:06 AM		DO YOU KNOW ANYTHING HOW INDEPENDENT VARIABLES
11:17:23 AM		IT THERE AN ASSUMPTION MADE BY DNA PEOPLE THAT THERE IS 50/50 CHANCE THAT IT WILL MATCH
11:17:54 AM		HOW DO YOU DETERMINE SW HISPANIC,
11:18:28 AM		IS THERE A DIFFERENCE BETWEEN SW HISPANIC OR SE HISPANIC
11:18:42 AM		ITEM 202 THE RED SHIRT, I KNOW YOU DID NOT FIND BLOOD, WAS THERE OTHER SOURCES OF DNA BESIDES BLOOD
11:20:18 AM		ONLY WORK FOR LAW ENFORCEMENT, TO ASSIST IN THEIR INVESTIGATIONS
11:21:05 AM		WHO CONTROLS WHAT YOU ARE LOOKING FOR, THE POLICE, ONLY LOOK FOR WHAT THEY ARE ASKED TO LOOK FOR
11:21:42 AM	CHANDLER	OBJECTS CALLS FOR SPECULATION
11:22:04 AM	COSBY	YOU CAN'T TELL THIS JURY WHO'S SHIRT IT IS
11:22:23 AM		REGARDING THE RED SHOES FOUND, HOW MANY SPOTS FOUND ON RIGHT SHOE 3 SPOTS
11:23:05 AM		HOW MUCH YOU NEED TO DO A DNA ANALYSIS
11:25:08 AM		DID YOU CHECK RED TENNIS SHOE TO SEE WHO OWNED IT, NO JUST ASKED TO LOOK FOR BLOOD
11:25:28 AM		REGARDING THE LEFT TENNIS SHOE
11:25:41 AM		YOU DESCRIBED BLACK DENIM SHORT, WHY DOES YOUR REPORT SAY BLUE
11:26:41 AM		LITTLE BIT OF BLOOD ON ZIPPER AREA
11:27:14 AM	CHANDLER	OBJECT TO CHARACTERIZATION IT WAS NOT ZIPPER
11:27:33 AM	COSBY	IT WAS ON PIECE OF MATERIAL THAT COVERS ZIPPER,
11:28:11 AM		WHY TOOTHBRUSH WAS TESTED FOR NON BLOOD, TOOK IT UPON YOURSELF TO DO THE NON BLOOD
11:29:43 AM		211 WAS NOT TESTED FOR BLOOD
11:29:49 AM		YOU TESTED SIX SWABS, WHY DID YOU NOT GET ALL SWABS THERE WERE 20 BOXES "DO NOT KNOW"

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
11:30:37 AM		DIRTY WHITE SOX, HAVE TESTIMONY THAT THERE WAS A RED MARK ASSOCIATED WITH A BLISTER
11:32:19 AM		REFERS TO EXHIBITS 81 & 82, 74 & 75
11:34:18 AM		COULD NOT TELL IF THEY WERE ALBERT'S SOX
11:34:33 AM		FINGERNAIL CLIPPINGS FOUND HIS OWN MATERIAL
11:34:45 AM	CHANDLER	RDEX - WHEN FINISHED WITH DNA TESTING WHAT DO YOU DO WITH THOSE ITEMS
11:35:42 AM		BENCH CONFERENCE STATE V. DURAN
11:36:30 AM	CHANDLER	THOSE ITEMS ARE RETURNED IN A MANNER WHERE OTHER AGENCIES CAN TEST THEM
11:36:49 AM		WITNESS EXCUSED
11:38:56 AM		#17 WITNESS CRIMSON MAES CALLED BY CHANDLER / SWORN / DEX
11:40:14 AM	COSBY	OBJECTS TO LISTEN TO PHONE CALL
11:40:28 AM	CHANDLER	WILL YOU RECALL IF I REFRESH YOUR MEMORY
11:41:26 AM		PLAY TO REFRESH HIS MEMORY
11:43:44 AM		DOES NOT RECALL IT IF IT WAS ME, I HAVE BEEN GOING THRU ALOT OF OTHER PROBLEMS, I CANNOT RECALL ANY OF THIS STUFF
11:44:48 AM	COSBY	OBJECTS TO HIM
11:45:08 AM	COURT	COUNSEL HAS MADE HIS OBJECTION
11:45:15 AM	CHANDLER	DO YOU RECALL THE DETECTIVE ASKING YOU IN 2007
11:45:28 AM		I DO NOT RECALL, I DON'T REMEMBER, DOES NOT RECOGNIZE DAN AGUILAR
11:46:08 AM		DO YOU KNOW WHERE RAGS TO RICHES IS, WHO IS BAM BAM
11:46:44 AM		WITNESS EXCUSED, SUBJECT TO RECALL
11:47:37 AM		#18 WITNESS JOHNATHON MARK HOWARD CALLED BY CHANDLER / SWORN / DEX , CERTIFIED POLICE OFFICER
11:48:39 AM		SUSPICIOUS CIRCUMSTANTIAL CALL RESPONDED TO CROSSHAIR'S GUN STORE AT 11:52 AM
11:49:22 AM		MET WITH DENNIS FITE,
11:49:38 AM	COSBY	HE HAS ALREADY TESTIFIED
11:49:52 AM	COURT	IT IS HEARSAY
11:50:04 AM	CHANDLER	IT IS NOT THE TRUTH OF THE MATTER TO PROVE
11:50:16 AM		WHAT WAS MR. FITES CALL ABOUT , INDIVIDUAL WHO FILLED OUT PAPERWORK WAS ALBERT RAMIREZ
11:50:59 AM		NO CRIME WAS COMMITED AND NO GUN WAS PURCHASED, COULD NOT FIND HIM ANYWHERE, NOT AGAINST LAW TO ATTEMPT TO BUY A FIREARM AT THAT AGE

ST, VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:15:46 PM		DO NOT HAVE ANY PROOF THAT YOUR CLIENT WAS TALKING ABOUT GUN
3:16:28 PM		YOU SAID YOU SAW BLISTERS ON BOTTOM'S OF HIS FEET, DID YOU TREAT THE BLISTERS, "NO"
3:17:07 PM		PHOTO'S OF HIM IN HIS UNDERWEAR WERE TAKEN IN THE JAIL
3:18:40 PM		GRAFFITI IN JAIL,
3:19:08 PM		IF A PERSON IN JAIL HAS TO BE RECORDED WHEN MAKING A CALL
3:19:42 PM		WHO IS THE PERSON HE WAS CALLING ON SECOND CALL "DO NOT KNOW"
3:20:16 PM		DID NOT CALL TO FIND OUT WHO THIS PERSON WAS
3:20:37 PM		FINDING CLOTHING 3 DAYS AFTER THE FACT
3:21:46 PM		REFERS TO HIS POLICE REPORT
3:22:49 PM		NOTE FROM JURY
3:23:21 PM	COURT	DOES NOT THINK QUESTION IS APPROPRIATE
3:23:34 PM	COSBY	REFERS TO EXHIBIT 8 "ARIAL PHOTO"
3:26:22 PM		HE NEVER WORKED THE SCENE
3:26:46 PM		REFERS TO EXHIBIT 58
3:28:06 PM	CHANDLER	RDEX - REFERS TO EXHIBIT 8
3:32:56 PM		IDENTIFICATION EXHIBIT 85
3:33:25 PM		IDENTIFICATION EXHIBIT 86 "
3:34:28 PM	COSBY	OBJECTION MISMARKED
3:34:37 PM	CHANDLER	WHO'S CLOTHING IN BAGS
3:35:16 PM		DID NOT FIND ANY EVIDENCE THAT NEEDED TESTING BUT HE COLLECTED, SUBJECT TO XEX MOVES FOR ADMISSION EXHIBIT 85 & 86
3:36:09 PM	COSBY	RXEX - TELL ME WHY EXHIBIT 85 IS MARKED OUT,
3:37:29 PM		EXPLAINS WHEN ARE AT A SCENE USE A DESIGNATOR
3:38:33 PM		JURORS QUESTION
3:39:06 PM	CHANDLER	RDEX - WHEN ASKED IF THERE WAS A RED MARK
3:39:54 PM	COSBY	RXEX - REFERS TO EXHIBIT 8
3:40:40 PM	CHANDLER	STIPULATE THAT JALISCO'S IS NOT INVOLVED
3:41:04 PM	COSBY	SCENE OF THE SHOOTING, CONTINUE TO REFER TO EXHIBIT 8
3:42:50 PM		WITNESS EXCUSED
3:43:43 PM		#5 WITNESS ANTONIO BOSQUE RECALLED BY CHANDLER
3:44:06 PM		WHO HE LISTENED PHONE CALL WITH, DID YOU HEAR
3:44:34 PM	COSBY	OBJECTS UNLESS HE IS CERTIFIED

ST, VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:45:19 PM	COURT	APPROVED HIS TRANSLATION RIGHT OR WRONG
3:45:40 PM		TRANSLATES WHAT ALBERT WAS SAYING ON PHONE CALL
3:47:17 PM	COSBY	WHERE IS THE REST OF THE CALL, WHAT DID THE AUNT SAY
3:47:47 PM		MAINLY FOCUSED ON WHAT RAMIREZ SAID
3:49:17 PM		WITNESSED EXCUSED
3:49:55 PM		#10 WITNESS RAFAEL AGUILAR CALLED BY MORRIS / SWORN / DEX
3:50:26 PM		MADE CONTACT WITH DFT ON APRIL 22ND, IDENTIFICATION OF DFT IN COURTROOM
3:51:28 PM		ADDRESS RESPONDED TOO, 512 W. 6TH ST., WHO WAS THERE WHEN YOU ARRIVED ALBERT RAMIREZ AND MR. ROBLEDO
3:52:22 PM		SPOKE WITH MR. RAMIREZ AND ISSUED A CRIMINAL TRESPASS FOR THAT ALBERT NOT
3:53:04 PM		OFFERS EXHIBIT 85 "CRIMINAL TRESPASS"
3:53:09 PM	COSBY	OBJECTS / COURT ADMITS
3:54:11 PM	COSBY	XEX - WHO OWNS THE PREMISES AT 512 W. 6TH, DID YOU CHECK WHO OWNED IT, "NO"
3:55:29 PM		SHOWS PLATEAU WIRELESS DOCUMENT, WHO WAS LIVING THERE 8/21/06
3:57:08 PM		REFERS TO EXHIBIT 56 "PADLOCK ON BEDROOM DOOR"
3:57:51 PM		HE DOES NOT KNOW ON THE DAY OF THE SHOOTING
3:58:12 PM		HOW OLD WAS MY CLIENT
3:59:41 PM		NOT SURE HOW LONG HE WAS LIVING THERE,
4:00:16 PM	MORRIS	RDEX - DID ELADIO TELL YOU WHAT DEBRA SAID SHE DID, NOT WANT HIM AT THE HOUSE
4:01:27 PM		WITNESS EXCUSED
4:01:47 PM		#11 WITNESS DARYL RICE CALLED BY MORRIS / SWORN / DEX
4:02:38 PM		WHAT HAPPENED ON MAY 31ST 2007, HOW YOU CAME IN CONTACT WITH ALBERT RAMIREZ
4:03:33 PM		REFRESH MEMORY BY SEEING REPORT
4:03:49 PM		DEBRA RAMIREZ WAS UPSET, SHE STATED THAT HER SON ALBERT HAD BUSTED THE WINDOWS OF CAR
4:04:15 PM	COSBY	OBJECTS
4:04:30 PM		IT WAS THE CAR BELONGING TO HER BOYFRIEND
4:04:57 PM		DID YOU EVER RECIEVE AN ESTIMATE FOR REPAIRS "YES FROM GLASS DOCTOR"
4:05:37 PM		ASKED ALBERT WHAT HAPPENED HE SAID I GOT MAD
4:06:29 PM	COSBY	XEX - WHAT DATE WAS YOUR REPORT MAY 31, 2007
4:07:28 PM	MORRIS	STIPULATE HE WAS 18 YEARS OLD

be admissible in evidence against such person in any criminal proceeding on any issue other than that of the person's sanity, ability to form specific intent or competency to stand trial."

5. The testimony of Dr. Burness is not admissible unless and until the defendant presents a claim of lack of specific intent or insanity to the jury.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any statements made by defendant to Dr. Burness at trial and further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: Brett J. Carter
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.

Brett J. Carter
PUBLIC DEFENDER DEPARTMENT

RP 269

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED CLERK'S OFFICE

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

2009 JAN 13 PM 3:34

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

[Signature]
CLERK OF DISTRICT COURT

434

ALBERT RAMIREZ,

Defendant.

DEFENDANT'S MOTION TO EXCLUDE THE INTRODUCTION OF ALL
PHOTOGRAPHS OF THE DECEASED AT TRIAL

Defendant Albert Ramirez, through counsel, requests this Court to exclude the State from offering all photographs of the deceased at trial wherein the following is shown:

1. The defense believes that the State will attempt to introduce photographs of the deceased, that were taken at the hospital and at the autopsy.
2. They are twenty five photographs of the deceased that were taken at the hospital. The photo's depict a large amount of blood and extremely prejudicial to the defendant. The photographs taken at the hospital of the victim depict the victim unclothed with the exception of a small towel covering his private parts. The cause of death is not in dispute and the only reason to introduce the photographs is to appeal to the emotions of the jury and prejudice the jury against the defendant.
3. Photographs taken at the autopsy are *per se* prejudicial to the defendant, and any evidence they provide of the alleged crime is cumulative and more prejudicial than probative.

RP 270

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE/ BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

1 cross-examining Defendant about previous acts of violence. Therefore, the State
2 argues that the evidence was properly admitted to show motive and pattern of conduct.

3 {45} When a district court's evidentiary ruling is properly preserved for review, we
4 examine the ruling under an abuse of discretion standard. *See State v. Flores*, 2010-
5 NMSC-002, ¶ 25, 147 N.M. 542, 226 P.3d 641. "An abuse of discretion occurs when
6 the ruling is clearly against the logic and effect of the facts and circumstances of the
7 case." *Id.* (internal quotation marks omitted). We will not say that the district court
8 "abused its discretion by its ruling unless we can characterize it as clearly untenable
9 or not justified by reason." *Id.* (internal quotation marks and citation omitted).

10 **1. Evidence of the trespass order, broken windshield, and broken window**

11 {46} First, Defendant argues that the court improperly admitted testimony about a
12 "no trespass" order Robledo had issued to Defendant, in violation of Rule 11-404.
13 The State responds that evidence regarding the "no trespass" order was relevant and
14 admissible because it demonstrated a pattern of conduct toward Robledo from which
15 the jury could infer that Defendant acted with deliberate intention to kill Robledo. In
16 addition, the State argues that Defendant did not object to testimony about the order
17 at trial only to the admission of the actual trespass order.

1 (47) At trial, the prosecution sought to elicit testimony that three months prior to the
2 murder, Robledo had obtained a criminal trespass notice barring Defendant from
3 returning to the home. The district court had previously ruled, prior to trial, that
4 evidence of the no-trespass order issued against Defendant by Robledo was admissible
5 as it was relevant to proving deliberate intent. During trial, defense counsel objected
6 to the admission of the trespass order. The court, finding that testimony about the
7 order was admissible as to motive, overruled the objection.

8 (48) Second, Defendant argues that the court improperly admitted testimony about
9 a prior incident involving a broken windshield. The State argues that evidence
10 regarding the broken window was relevant and admissible because it demonstrated a
11 pattern of conduct toward Robledo from which the jury could infer that Defendant
12 acted with deliberate intention to kill Robledo.

13 (49) At trial, the prosecution sought to admit evidence that approximately one
14 month before the killing, Defendant broke the windshield of Robledo's car because
15 he "got mad." The defense objected to the testimony at trial regarding the broken
16 windshield, claiming it was "uncharged conduct." The district court allowed the
17 testimony finding that it demonstrated Defendant's pattern of conduct toward
18 Robledo.

1 {50} Third, the court admitted testimony about a police investigation of a broken
2 window at Robledo's house, although the court did not allow the witness to testify as
3 to who had broken the window. The State argues that Defendant failed to preserve
4 any argument regarding the broken window because he did not move to have the
5 testimony stricken after the district court sustained the objection.

6 {51} At trial, the prosecution sought to introduce testimony that a month before the
7 killing, Defendant's mother had filed a police report after Defendant had broken the
8 front window of Robledo's home when no one would answer the door. The
9 prosecutor asked the responding officer if he knew who had broken the window.
10 Defense counsel objected, arguing that the responding officer's testimony as to who
11 broke the window was inadmissible hearsay testimony and violated Defendant's
12 confrontation rights. The court sustained the objection. Despite the limitation on the
13 prosecution, the Defendant subsequently testified on cross-examination that after no
14 one answered the door, he had broken the window by knocking on it as it was
15 "flimsy." On appeal, Defendant argues that all of the testimony about the broken
16 window, including the filing of the police report, was improper.

17 {52} "Evidence of a crime, wrong, or other act is not admissible to prove a person's
18 character in order to show that on a particular occasion the person acted in accordance

1 with the character.” Rule 11-404(B)(1) NMRA. However, “[t]his evidence may be
 2 admissible for another purpose, such as proving motive, opportunity, intent,
 3 preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Rule
 4 11-404(B)(2). *IT WAS A ROAD ACCIDENTLY WRONG ADMITTED*

5 {53} The procedure for admitting evidence under Rule 11-404(B) requires first,
 6 identification of the “consequential fact to which the proffered evidence of other acts
 7 is directed.” *State v. Serna*, 2013-NMSC-033, ¶ 17, 305 P.3d 936 (internal quotation
 8 marks and citation omitted). Second, the rule requires a demonstration of the other
 9 acts’ “relevancy to the consequential facts, and the material issue, such as intent, must
 10 in fact be in dispute.” *Id.* (internal quotation marks and citation omitted). Third, if the
 11 evidence offered is of a crime other than the one charged, the other crime must “have
 12 a real probative value, and not just possible worth on issues of intent, motive, absence
 13 of mistake or accident, or to establish a scheme or plan.” *Id.* (citation omitted).
 14 “[T]he rationale for admitting the evidence [must be] to prove something other than
 15 propensity.” *Id.*; see also *State v. Martinez*, 1999-NMSC-018, ¶ 27, 127 N.M. 207,
 16 979 P.2d 718 (“The list of permissible uses of evidence of other wrongs in Rule 11-
 17 404(B) is intended to be illustrative rather than exhaustive, and evidence of other

1 wrongs may be admissible on alternative relevant bases so long as it is not admitted
2 to prove conformity with character.” (citation omitted)).

3 {54} Here, the evidence of the “no trespass” order, testimony about the broken
4 windshield, and the broken window was consequential to the determination of whether
5 Defendant had the intent to kill Robledo, an essential element of first-degree murder.
6 The State was not attempting to prove that Defendant acted in accordance with his
7 character, but rather that Defendant had motive and the intent to murder Robledo
8 because of their strained relationship. Such a purpose is permitted under Rule 11-402
9 NMRA. *See, e.g., State v. Rojo*, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829
10 (holding that evidence of the defendant’s and victim’s deteriorating relationship and
11 the specific actions surrounding her reason for rejecting the defendant “directly
12 addresse[d] the motivational theories presented at trial . . . [and t]hus, the trial court
13 did not abuse its discretion by admitting this evidence”); *see also State v. Allen*,
14 2000-NMSC-002, ¶ 41, 128 N.M. 482, 994 P.2d 728 (holding that “evidence of
15 Defendant’s prior crime in 1982 was relevant to prove his motive for the murder in
16 the context of the aggravating circumstance of murdering a witness.” (citations
17 omitted)). Accordingly, we hold that the district court did not abuse its discretion in
18 admitting the evidence of Defendant’s prior acts.

1 **2. Evidence of the head-butt on an officer**

2 {55} Defendant argues that the district court erred in allowing the prosecution's
3 inquiry during cross-examination about whether Defendant had head-butted a police
4 officer, arguing such evidence was "not connected by the prosecution in any manner
5 to killing of Mr. Robledo." The State argues that Defendant testifying that Robledo
6 was the first aggressor opened the door to being cross-examined on specific instances
7 of conduct where Defendant was aggressive and violent, including the head-butt on
8 an officer.

9 {56} At trial, Defendant testified that on the day he shot Robledo, he went to his
10 mother's house, saw Robledo, and they began arguing. Defendant claimed Robledo
11 struck him and hit him. Defendant also testified that Robledo "picked on" him, that
12 the Defendant had heard from his mother that Robledo had killed someone, and that
13 Robledo was not nice and not caring. Defendant stated that he did not plan to kill
14 Robledo, but that he was defending himself and knew that Robledo had a gun.
15 Defendant thought he was in danger when Robledo allegedly threatened to get his
16 pistol.

17 {57} On cross-examination, the prosecution asked the district court to allow evidence
18 of specific instances where the Defendant was aggressive, under Rule 11-

1 404(A)(2)(b)(ii) and Rule 11-405, because Defendant put forth evidence that Robledo,
2 the victim, was the first aggressor and had a violent character. Defense counsel
3 objected to the question, arguing that it did not satisfy any of the purposes of Rule 11-
4 404. The court overruled the objection. The district court granted the prosecution's
5 request to admit evidence of specific instances of conduct and allowed the prosecution
6 to ask the question. The prosecutor asked Defendant, "[i]sn't it true that you have also
7 head-butted a police officer?" Defense counsel, in order to preserve the issue for
8 appeal, renewed his objection.

9 {58} The Rules of Evidence contain an exception in criminal cases to the general rule
10 prohibiting character evidence: if a defendant offers evidence of a victim's pertinent
11 trait, the State can offer rebuttal "evidence of the defendant's same character trait."
12 Rule 11-404(A)(2)(b)(ii). "When evidence of a person's character is admissible, it
13 may be offered in the form of reputation or opinion evidence. *See* Rule 11-405(A).
14 "On cross-examination of the character witness . . . inquiry into relevant specific
15 instances of the person's conduct" are allowed. Rule 11-405(A). Or "when a person's
16 character or character trait is an essential element of a charge, claim, or defense, the
17 character or trait may also be proved by relevant specific instances of conduct." Rule
18 11-405(B).

1 {59} While it is correct that the defendant who offers evidence of a victim's pertinent
2 character trait (e.g., violence) opens the door to allow the prosecution to offer
3 evidence of the defendant's same character trait, under Rules 11-404(A)(2)(b) and 11-
4 404(A)(2)(b)(ii) NMRA, the evidence that is admitted may only be reputation or
5 character evidence, unless the character trait is an essential element of the crime
6 charged. Here, Defendant offered evidence at trial that he shot Robledo in self-
7 defense because Robledo was the first aggressor. He supported this assertion by
8 offering evidence of Robledo's character: that Robledo was a violent and aggressive
9 man who had killed a person. This was evidence of the victim's "pertinent trait": a
10 reputation for violence and aggression. By offering the evidence of Defendant's head-
11 butt on an officer during cross-examination of Defendant, the State was offering
12 evidence that Defendant had the same traits for aggression and violence through an
13 inquiry into specific instances of Defendant's conduct. The evidence of head-butting
14 an officer is not reputation or opinion testimony. Nor is it proving an essential
15 element of the crime charged because violence is not a specific element of murder or
16 self-defense. *State v. Baca*, 1993-NMCA-051, ¶ 16, 115 N.M. 536, 540, 854 P.2d
17 363, 367 ("The victim's violent disposition is not an 'element' of the defense in the
18 strictest sense; rather, it is used circumstantially -- that is, to help prove that the victim

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ,

Defendant.

Prior bad

ACTS
Evidence

IN Closing Argument
INADMISSIBLE

No. CR-2007-434

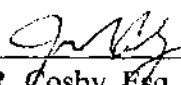
DESIGNATION OF EXHIBITS

Pursuant to Rule 12-212 NMRA, the Defendant designates the following exhibits:

1. State's Exhibits #1 - #110.

LETTER Rap
Song stating
OF killing people
to help prove
1st degree murder
Deliberate will full
it was admitted
was inadmissible.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant
P.O. Box 3330
Roswell, New Mexico 88202-3330
(575) 625-0516

And then said it

ALL PAPERS ON FACTS, EX. B, TS
Record, documents, Evidence,
CASES. RELEVANT TO MY CASE

C. SEE CASE LAW.

STATE V. BRAWLEY
Cite, AS. 137A.3d. 757
(CONN. 2016).

IT SAYS. THE COURT RULED TO
ALLOW DEFENDANT MAY SEEK TO
ESTABLISH THAT THE JURY DID,
IN FACT, OBSERVE HIM IN SHOULES
IN CONNECTION WITH A PETITION
FOR WRIT OF HABEAS CORPUS.

Chaffin

STATE v. BRAWLEY

Cite as 137 A.3d 757 (Conn. 2016)

Conn. 763

trial with respect to whether the jury could or did see the restraints. In fact, defense counsel never renewed or amplified his initial objection after the trial court denied his motion to have the shackles removed. Furthermore, our review of the record reveals no evidence to suggest that the jury actually saw or otherwise knew of the defendant's shackles. In addition, according to the trial court's rectification of the record, the defendant always was seated at the defense table before the jury entered, and he remained there until after the jury left the courtroom. Finally, the fact that the trial court could not recall presiding over a single case in which a jury had been able to observe a

defendant in restraints strongly supports the conclusion that the jury in the present case did not see the defendant's shackles. On the present record, therefore, the defendant has failed to establish that the trial court's impropriety in having him shackled during his trial abridged his presumption of innocence.⁴

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.



arguments. *Id.*, at 634–35, 125 S.Ct. 2007. With respect to the first contention, the court determined that, contrary to Missouri's assertion, the record in the case "[made] clear that the jury was aware of the shackles." *Id.*, at 634, 125 S.Ct. 2007. With regard to the second argument, the court concluded that the record "contain[ed] no formal or informal findings" explaining the trial court's reasons for imposing the requirement of shackles beside "the fact that Deck already [had] been convicted." (Internal quotation marks omitted.) *Id.* On the basis of its rejection of the two foregoing arguments, the court rejected Missouri's final argument, concluding that, when "a court, without adequate justification, orders [a] defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate prejudice to make out a due process violation. The [s]tate must prove beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." (Emphasis added; internal quotation marks omitted.) *Id.*, at 635, 125 S.Ct. 2007.

Thus, *Deck* makes clear that a heightened burden falls on the state when the unwarranted restraints are visible to the jury, and not when, as in *Banegas*, the record is silent on the matter. Accordingly, we disagree with the conclusion that the court reached in *Banegas*. We further note that our understanding of the United States Supreme Court's holding in *Deck* is consistent with that of other federal and state courts that have examined the issue.

See, e.g., *Mendoza v. Berghuis*, 544 F.3d 650, 654 (6th Cir.2008) ("Deck's facts and holding ... concerned only visible restraints at trial. The [United States] Supreme Court was careful to repeat this limitation throughout its opinion." [Emphasis omitted.]), cert. denied, 556 U.S. 1188, 129 S.Ct. 1996, 173 L.Ed.2d 1096 (2009); see also *Ochoa v. Workman*, 669 F.3d 1130, 1145 (10th Cir.) ("it is the potential impact on the jury of visible restraints that implicates the fundamental fairness of a jury trial proceeding"), cert. denied, — U.S. —, 133 S.Ct. 321, 184 L.Ed.2d 190 (2012); *People v. Letner*, 50 Cal.4th 99, 155, 235 P.3d 62, 112 Cal.Rptr.3d 746 (2010) (*Deck* did not support contention that prosecution was required to disprove visibility when there was no evidence in record that jury observed defendant wearing shackles), cert. denied, 563 U.S. 939, 131 S.Ct. 2143, 179 L.Ed.2d 897 (2011), and cert. denied sub nom. *Tobin v. California*, 563 U.S. 939, 131 S.Ct. 2097, 179 L.Ed.2d 897 (2011); *Hoang v. People*, 323 P.3d 780, 785–86 (Colo.) (when restraints are visible to jurors, prosecution bears burden to prove harmless error, but when it is not apparent from record that jury had observed shackles, defendant must demonstrate visibility), cert. denied, — U.S. —, 135 S.Ct. 233, 190 L.Ed.2d 175 (2014).

4. Of course, the defendant may seek to establish that the jury did, in fact, observe him in shackles in connection with a petition for a writ of habeas corpus.

STATE v. BRAWLEY
Cite as 137 A.3d 757 (Conn. 2016)

Conn. 757

case to that court for further proceedings consistent with this opinion.

In this opinion the other justices concurred.



321 Conn. 583

STATE of Connecticut

v.

Michael BRAWLEY.

No. 19441.

Supreme Court of Connecticut.

Argued Dec. 15, 2015.

Decided June 14, 2016.

Background: Defendant, who remained shackled during trial, was found guilty in the Superior Court, Judicial District of Waterbury, Schuman, J., of burglary, conspiracy to commit burglary, kidnapping, conspiracy to commit kidnapping, assault, and carrying a pistol without a permit by the jury, and of criminal possession of a firearm by the court. Defendant appealed. The Appellate Court affirmed. Defendant petitioned for certification to appeal.

Holding: The Supreme Court, Palmer, J., held that defendant did not provide evidence required to support claim that his presumption of innocence was abridged by shackles.

Affirmed.

1. Criminal Law §637.7

Burglary defendant did not provide evidence demonstrating that jury actually was aware of his restraints at trial, as required to support claim that his presumption of innocence was abridged by trial court requiring him to remain shack-

led; even though record did not disclose reason that shackling was reasonably necessary, defense did not make any offer of proof with respect to whether jury saw restraints, there was no evidence to suggest that jury actually saw shackles, court's rectification of record indicated that defendant always was seated at defense table before jury entered and after jury left courtroom, and court could not recall single case in which jury had been able to observe defendant in restraints. Practice Book 1998, § 42-46.

2. Criminal Law §637.2

As a general proposition, a criminal defendant has the right to appear in court free from physical restraints.

3. Criminal Law §308

The presumption of innocence, although not articulated in the constitution, is a basic component of a fair trial under the system of criminal justice.

4. Criminal Law §637.2, 637.3

A defendant's right to appear before the jury unfettered is not absolute; a trial court may employ a reasonable means of restraint on a defendant if, exercising its broad discretion in such matters, the court finds that restraints are reasonably necessary under the circumstances. Practice Book 1998, § 42-46.

5. Criminal Law §637.4

The law permits a state to shackle a criminal defendant during the guilt phase only in the presence of a special need. Practice Book 1998, § 42-46.

6. Criminal Law §637.1

In order for a criminal defendant to enjoy the maximum benefit of the presumption of innocence, courts should make every reasonable effort to present the defendant before the jury in a manner that does not suggest, expressly or impliedly,

Shackles

1 {41} In reviewing the fundamental error exception to the preservation rule, we must
2 first determine whether an error occurred and if so, whether the error was
3 fundamental. *See id.* Fundamental error “must be such error as goes to the foundation
4 or basis of a defendant’s rights or must go to the foundation of the case or take from
5 the defendant a right which was essential to his defense and which no court could or
6 ought to permit him to waive.” *State v. Johnson*, 2010-NMSC-016, ¶ 25, 148 N.M.
7 50, 229 P.3d 523 (citation omitted). “Fundamental error only applies in exceptional
8 circumstances when guilt is so doubtful that it would shock the judicial conscience to
9 allow the conviction to stand.” *Id.*

10 {42} In *Holly*, we held that no fundamental error occurred where it was unclear
11 whether the juror had actually seen the defendant in handcuffs, and if they had,
12 whether it was more than “inadvertent or insignificant exposure.” 2009-NMSC-004,
13 ¶ 42. Similarly, in *Johnson*, because there was no indication that the jury was aware
14 the defendant was wearing leg irons during a trial, the presumption of innocence was
15 not violated, the dignity of the judicial process was not affected, and the district court
16 did not commit fundamental error. 2010-NMSC-016, ¶¶ 25, 29.

17 {43} Here, defense counsel concedes that a black skirt on the table shielded the jury’s
18 view of Defendant’s shackles and that he did not ask the court to make a finding of

ALL PAPERS ARE FACTS AND EXHIBITS
RECORD, DOCUMENTS, CASES RELEVANT
TO MY CASE

D.
PROSECUTORIAL MISCONDUCT.

IN 3 INSTANCES.

- ①. IN CROSS EXAMINATION PROSECUTOR
QUESTIONED PETITIONER OF DOING
LEGAL RESEARCH TO BEAR HIS CHARGES.
AND LEGAL RESEARCH TO GET THE
JURY TO BUY THIS.

ITS PROSECUTORIAL MISCONDUCT
ON COMMENT ON RIGHT TO
ASSIST IN HIS DEFENCE.

See exhibits.

- ②. COMMENT IN CLOSING ARGUMENTS
THAT MR. RUIZ IS A
MENACE TO SOCIETY AND A
MURDERER. I NEED TRANSCRIPT
THERE IS NO EVIDENCE
TO PROVE THIS.

- ③. USING PRIOR BAD ACTS IN CLOSING
ARGUMENTS. THAT WERE INCOMMISSIBLE
AND PREJUDICIAL AND IRRELEVANT
TO THE MURDER CASE
See exhibits.

1 prejudice or declare a mistrial. Because it is unclear whether the jury saw the leg
2 restraints and if they did, there is no evidence that it was anything other than
3 inadvertent or insignificant exposure, this case is not the exceptional type that goes
4 to the violation of the foundation of presumption of innocence. Further, this case does
5 not shock the conscience as Defendant's guilt is supported by substantial evidence in
6 the record, including eyewitness testimony and evidence of Defendant's motive and
7 a pattern of conduct toward Robledo. *See State v. Trujillo*, 2002-NMSC-005, ¶ 60,
8 131 N.M. 709, 42 P.3d 814 (holding that because the Court found "substantial
9 evidence in the record to support Defendant's convictions, and because Defendant
10 failed to demonstrate circumstances that 'shock the conscience' or show a
11 fundamental unfairness," no fundamental error existed). Accordingly, there was no
12 fundamental error by the district court.

13 **E. The court did not abuse its discretion in admitting prior bad acts**

14 {44} Defendant's fifth issue is that the district court erred in admitting evidence of
15 prior acts, in violation of Rule 11-402 NMRA. Defendant argues that cumulatively,
16 the introduction of this evidence created the impression that Defendant was
17 troublesome and a lawbreaker. The State argues that the district court did not err in
18 allowing the State to present evidence of Defendant's animus toward the victim or in

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1 acted in the particular manner at the time of the incident in question.”) It seems that
2 the information of Defendant head-butting an officer is being used only to show
3 Defendant’s propensity for violence. And contrary to the State’s argument, under
4 Rule 11-405(A) on cross-examination it is the specific instances of Robledo’s conduct
5 that is allowed to rebut the testimony from Defendant of Robledo’s “pertinent trait.”
6 See Rule 11-405.

7 (60) Accordingly, it was error for the district court to admit the evidence of
8 Defendant’s prior act of head-butting a police officer. Non-constitutional error is
9 harmless when there is no reasonable probability the error affected the verdict. *State*
10 *v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d 110. In the context of all the evidence
11 in the record as referenced in paragraphs 3 and 4, *supra*, this isolated error was
12 harmless and had no effect on the conviction.

13 **F. The district court did not abuse its discretion by not declaring a mistrial**
14 **based on questions about Defendant’s legal research**

15 (61) Defendant’s sixth issue is that the district court abused its discretion when it
16 denied Defendant’s motion for a mistrial after the prosecutor cross-examined
17 Defendant about the amount of legal research he conducted. Defendant argues that
18 the prosecution’s conduct shows a calculated and pervasive strategy of penalizing the
19 Defendant for the exercise of his constitutional rights by characterizing Defendant’s

prosecutor's
misconduct
32

1 actions as manipulative abuses of “the system.” The State argues that because
2 Defendant initially indicated that he was seeking to argue a defense of self-defense,
3 the prosecutor did not cross the line by asking about the amount of legal research
4 Defendant had conducted.

5 {62} During the cross-examination of Defendant, the prosecutor asked, “And you’ve
6 done a significant amount of legal research on how to get the jury to buy this?” The
7 defense objected and moved for a mistrial. The court directed the prosecution to lay
8 a foundation. The prosecutor asked Defendant, “Do you recall giving a lot of requests
9 to go to the law library to research how to beat your charges?” Defense counsel
10 objected a second time, arguing that the question rose to prosecutorial misconduct,
11 and again asked for a mistrial. The judge ruled that he would not allow the questions
12 about Defendant’s research and would not declare a mistrial.

13 {63} We examine a district court’s denial of a motion for mistrial based on an
14 allegation of prosecutorial misconduct under an abuse of discretion standard. *See*
15 *Allen*, 2000-NMSC-002, ¶ 95 (“the trial court is in the best position to evaluate the
16 significance of any alleged prosecutorial errors” (citation omitted)); *see also State v.*
17 *Ramos-Arenas*, 2012-NMCA-117, ¶ 1, 290 P.3d 733. ~~An isolated, minor impropriety~~
18 ~~ordinarily is not sufficient to warrant reversal~~ . because a fair trial is not necessarily

1 a perfect one.” *Allen*, 2000-NMSC-002, ¶ 95 (internal quotation marks and citations
2 omitted).

3 {64} / Reviewing all of the comments made, in the context in which they were made,
4 and taking into account those comments’ potential effect on the jury, the questions
5 were isolated and minor. Accordingly, the prosecutor’s remarks did not deprive
6 Defendant of a fair trial.

7 **IV. CONCLUSION**

8 {65} We hold that the district court did not commit reversible error as to all of
9 Defendant’s claims. Accordingly, we affirm Defendant’s convictions.

10 {66} **IT IS SO ORDERED.**

11

12

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PETRA JIMENEZ MAES, Justice

15 **WE CONCUR:**

16

17 **CHARLES W. DANIELS, Chief Justice**

18

19 **EDWARD L. CHÁVEZ, Justice**

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Washington as a "self-serving, illogical selfish non-compassionate, no emotional interest in a family type of person," who acted irrational due to "drugs and alcoholism and a general not caring about other people." J.A. at 270-71. The crime, he implored to the jury, "[s]ure fits him." J.A. at 271. The prosecutor thus articulated perhaps the paradigm of the improper "bad character" argument—that the alleged criminal acts "fit" the evidence of Washington's character and lifestyle. Because this character attack pervaded the closing argument and rebuttal, we find that the prosecutor's misconduct was severe. See *Cook*, 602 F.2d at 120 (making the same conclusion after a pervasive character attack).

2.

[7] We also agree with Petitioner that the prosecutor engaged in serious misconduct when he characterized Tamara's story as having been consistent over time when there was no evidence supporting that factual assertion.

[8,9] Misrepresenting facts in evidence can amount to substantial error because doing so "may profoundly impress a jury and may have a significant impact on the jury's deliberations." *Donnelly v. DeChristoforo*, 416 U.S. 637, 646, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). For similar reasons, asserting facts that were never admitted into evidence may mislead a jury in a prejudicial way. See *Berger v. United States*, 295 U.S. 78, 84, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). This is particularly true when a prosecutor misrep-

4. Q. Did you tell your mother something that happened to you then?

A. Yes.

Q. Why'd you tell her?

A. 'Cause I didn't want to go back there....

Q. Did you talk to some nurses or maybe one nurse[?]

A. I talked to a doctor and a nurse....

Q. Did you tell them what happened to you[?]

A. Yes.

resents evidence because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligation as a representative of a sovereignty. See *id.* at 88, 55 S.Ct. 629.

Given this precedent, characterizing Tamara's conversations with different individuals as consistent comprised clear prosecutorial misconduct. The State suggested that Tamara had been consistent when it stated the following:

This child talked to her mother, this child talked to the doctor. This child talked to the social service worker in detail. She testified. This child talked to Sergeant Elford in detail. This child went through preliminary examination and cross examination where there was cross examination and this child testified before you and *nowhere for the most part based upon what happened, has it changed.*

J.A. at 255 (emphasis added). Yet apart from the doctor's notes—to which the parties stipulated—the prosecutor elicited no evidence on the specifics of Tamara's conversations with any of these individuals, establishing only that conversations had occurred. Surely, then, there was no evidence as to whether or not her story had changed.

When Tamara herself testified, she stated only that she had conversations with the referenced people, and that she had told them "what happened." The prosecutor did not ask her to describe the details of those conversations, nor did she volunteer them.⁴ Moreover, no other witnesses

Q. Okay. And then ... did a lady come out to see you at your school?

A. Yes.

Q. Did she talk to you alone?

A. Yes.

Q. And did you tell her what had happened to you?

A. Yes.

Q. She asked you, didn't she?

A. Yes.

Q. Okay. And then later on there was some policemen, Sergeant Elford, this gentleman right here?

He said
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time I told
my story
to anyone
in cross exam
and closing
argument.

Stacy had heard
and not Donnelly
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Cite as 228 F.3d 689 (6th Cir. 2000)

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testified about what Tamara told them because such testimony would have been inadmissible hearsay. First, as Cora Beard was about to explain to the jury what Tamara had told her, Keston objected on hearsay grounds. She therefore testified only that, as a result of Tamara's statements, she did not move back in with Washington and she took Tamara to the hospital. During his examination of Sergeant Elford, the prosecutor only elicited that Elford interviewed Tamara Beard, and that he spoke to the prosecutor's office after that interview. Similarly, Woodson, the social service worker who examined Tamara, testified only that she had talked with Tamara four times, that Tamara had been alone with her for three of those conversations, and that as a result of their talks, she had contacted Sergeant Elford. She said nothing of the content of their conversations.

Given this testimony, we find that the State committed plain misconduct by stating that Tamara's story had not changed as she talked to these different individuals. Not only did the prosecutor improperly refer to statements not in evidence, but it is clear that the prosecutor's purpose was to enhance Tamara's credibility in the eyes of the jury. See, e.g., J.A. at 255 ("You think that a ten year old child is going to go through all of that, fool everybody, talking about two instances."). Such bolstering is also improper. Cf. *United States v. Francis*, 170 F.3d 546, 551 (6th Cir.1999) (stating that improper "[b]olstering occurs when the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury"); *United States v. Duval*, No. 89-1891, 1990 WL 52371, at

*2 (6th Cir. April 26, 1990) (unpublished decision) (stating that improper witness vouching occurs when a prosecutor alludes to evidence outside the record as supporting the witness's testimony).

[10,11] Finally, we are unmoved by the State's feeble attempt to justify its plain misconduct. The State argues in its brief that in "this case, Petitioner was charged with first degree criminal sexual conduct involving penetration. Obviously Tamara must have given a statement to someone prior to trial in which she claimed penetration." Hofbauer's Br. at 23. In a similar vein, the State contended at oral argument that the prosecutor was simply pointing out to the jury that Tamara did not "recant" her story, a position the State argues was a reasonable inference given that the State brought the prosecution. This explanation is specious for two reasons. First, this justification simply sidesteps the impropriety at issue. The prosecution did far more than merely inform the jury that Tamara "must have" stated that penetration occurred at some point, or that she did not "recant" her story. Instead, it informed the jury that Tamara's story to each and every witness had never changed when there was in fact no evidence to that effect. This argument was a clear attempt to boost the credibility of Tamara and the believability of her story. Second, the very premise of the State's justification on appeal is flawed. Indeed, if the State had been attempting to argue the "reasonable inference" it described at oral argument and in its brief, that effort itself would have constituted gross misconduct. "[I]t is always improper for a prosecutor to suggest that a defendant is guilty merely be

- A. Yes.
Q. Did he talk to you and ask you what happened?
A. Yes.
Q. Go over it with you?
A. Yes.
Q. And then there came a time a while ago that you testified across the street over here in the District Court building before a judge, didn't you?

- A. Yes.
Q. And he asked about telling the truth and you were under oath, is that right?
A. Yes.
Q. And you told the court what happened?
A. Yes.

J.A. at 162-63.

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defendant needs and burden rests on the accused to demonstrate a constitutional violation. U.S.C.A. Const.Amend. 6.

12. Criminal Law ¶641.3

Trial is unfair if the accused is denied counsel at a critical stage of the trial. U.S.C.A. Const.Amend. 6.

13. Criminal Law ¶641.13(1)

If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of Sixth Amendment rights which makes adversary process itself presumptively unreliable. U.S.C.A. Const.Amend. 6.

14. Criminal Law ¶641.13(1)

Only when surrounding circumstances justify a presumption of ineffectiveness can Sixth Amendment claim be sufficient without inquiry into counsel's actual performance at trial. U.S.C.A. Const.Amend. 6.

15. Criminal Law ¶641.13(1), 1166.11

Fact that accused can attribute a deficiency in his representation to a source external to trial counsel does not make it any more or less likely that he received the type of trial envisioned by the Sixth Amendment, nor does it justify reversal of his conviction absent an actual effect on the trial process or the likelihood of such an effect. U.S.C.A. Const.Amend. 6.

16. Criminal Law ¶641.13(2)

Fact that defendant's newly appointed counsel was given only 25 days to prepare for trial of case which it had taken the Government four and one-half years to investigate, fact that counsel was a young attorney primarily engaged in real estate practice and was trying his first criminal case, gravity of the charge of mail fraud against the defendant, complexity of the case, and inaccessibility of witnesses to counsel did not, individually or in combination provide a basis for concluding that competent counsel was not able to provide

defendant with effective assistance of counsel; it was error to infer that right to counsel had been violated. U.S.C.A. Const. Amend. 6.

17. Criminal Law ¶641.13(4)

Character of a particular lawyer's experience may shed light in an evaluation of his actual performance but it does not justify a presumption of ineffectiveness in the absence of such an evaluation. U.S.C.A. Const.Amend. 6.

18. Criminal Law ¶641.13(2)

Neither fact that trial counsel used notes to assist him during opening statement to the jury nor fact that counsel told the jury that it was counsel's first trial was so inherently inconsistent with a reasonable effective defense as to justify a presumption that defendant's trial was unfair.

19. Criminal Law ¶1083

District court had jurisdiction to entertain motion for new trial based on ineffective assistance of counsel even though case was pending on direct appeal; court could have denied the motion on its merits or certified its intention to grant the motion to the Court of Appeals, which could have entertained a motion for remand. Fed. Rules Cr.Proc.Rule 33, 18 U.S.C.A.

20. Criminal Law ¶1192

Where Court of Appeals did not reach claim of actual ineffectiveness of counsel, because it reversed conviction based on presumption of ineffective assistance of counsel under the circumstances, claim of actual ineffectiveness remained open.

*Syllabus **

Respondent and two associates were indicted on mail fraud charges involving a "check kiting" scheme whereby checks were transferred between a bank in Florida and a bank in Oklahoma. When respondent's retained counsel withdrew shortly before the scheduled trial date, the District Court appointed a young lawyer with a real

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

U.S. v. CARTER

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Cite as 236 F.3d 777 (6th Cir. 2001)

UNITED STATES of America,
Plaintiff-Appellee,

v.

Roquel Allen CARTER, Defendant-
Appellant.

No. 99-5430.

United States Court of Appeals,
Sixth Circuit.

Argued Aug. 1, 2000.

Decided and Filed Jan. 18, 2001.

Defendant was convicted in the United States District Court for the Middle District of Tennessee, John T. Nixon, J., of armed bank robbery, and he appealed. The Court of Appeals, Moore, Circuit Judge, held that: (1) prosecutor committed plain error in misstating the testimony of key identification witness and by repeatedly insisting that defense counsel was lying about witness's testimony; (2) prosecutor's misconduct affected defendant's substantial rights; and (3) misconduct seriously affected the integrity of judicial proceedings, warranting reversal of conviction and remand for new trial.

Reversed and remanded.

1. Criminal Law §1037.1(2)

Prosecutor committed plain error in misstating the testimony of identification witness by insisting that she did not testify that federal agent told her before she took the witness stand that she had made a mistake in identifying robber, when she had conceded on three separate occasions during trial that agent had told her she made a mistake, just before she gave her trial testimony, and by repeatedly insisting that defense counsel was lying about witness's testimony.

2. Criminal Law §1171.1(1)

In determining when prosecutorial misconduct warrants a new trial, a court must first consider whether the prosecutor's conduct and remarks were improper and, if so, the court must then consider and weigh the following four factors in

determining whether the impropriety was flagrant and thus warrants reversal: (1) whether the conduct and remarks of the prosecutor tended to mislead the jury or prejudice the defendant; (2) whether the conduct or remarks were isolated or extensive; (3) whether the remarks were deliberately or accidentally made; and (4) whether the evidence against the defendant was strong.

3. Criminal Law §1134(3)

When reviewing challenges to a prosecutor's remarks at trial, Court of Appeals examines the prosecutor's comments within the context of the trial to determine whether such comments amounted to prejudicial error, and in so doing, Court considers whether, and to what extent, the prosecutor's improper remarks were invited by defense counsel's argument.

4. Criminal Law §1037.1(1)

Prosecutorial misconduct may be so exceptionally flagrant that it constitutes plain error, and is grounds for reversal even if the defendant did not object to it.

5. Criminal Law §1030(1)

Before an appellate court can correct an error not raised at trial, there must be (1) error, (2) that is plain, and (3) that affects substantial rights, and if all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

6. Criminal Law §720(2), 723(1)

While counsel has the freedom at trial to argue reasonable inferences from the evidence, counsel cannot misstate evidence or make personal attacks on opposing counsel.

7. Criminal Law §1171.7

Prosecutor's misconduct, constituting plain error, in misstating the testimony of identification witness by insisting that she did not testify that federal agent told her before she took the witness stand that she had made a mistake in identifying robber, when she had so testified three times, and by repeatedly insisting that defense coun-

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to mislead the jury or prejudice the defendant; 2) whether the statements were isolated or among a series of improper statements; 3) whether the statements were deliberately or accidentally before the jury; and 4) the total strength of the evidence against the accused. *United States v. Monus*, 128 F.3d 376, 394 (6th Cir.1997) (citing *United States v. Cobleigh*, 75 F.3d 242, 247 (6th Cir.1996)); *Carroll*, 26 F.3d at 1385 (citing *United States v. Leon*, 534 F.2d 667, 679 (6th Cir.1976)). To reverse a conviction because of an improper non-flagrant statement, a reviewing court must determine that: 1) the proof of the defendant's guilt is not overwhelming; 2) the defense counsel objected; and 3) the trial court failed to cure the impropriety by failing to admonish the jury. *Monus*, 128 F.3d at 394; *Carroll*, 26 F.3d at 1385-86 (citing *United States v. Bess*, 593 F.2d 749, 757 (6th Cir.1979)).

[6,7] The Defendants' first contention pertaining to misconduct is that the prosecutor improperly vouched for government witnesses. Improper vouching occurs when a prosecutor supports the credibility of a witness by indicating a personal belief in the witness's credibility thereby placing the prestige of the office of the United States Attorney behind that witness. See, e.g., *Taylor v. United States*, 985 F.2d 844, 846 (6th Cir. 1993); *United States v. Martinez*, 981 F.2d 867, 871 (6th Cir.1992). Generally, improper vouching involves either blunt comments, see, e.g., *United States v. Kerr*, 981 F.2d 1050, 1053 (9th Cir.1992) (stating that improper vouching occurred when prosecutor asserted own belief in witness's credibility through comments including "I think he [the witness] was candid. I think he is honest."), or comments that imply that the prosecutor has special knowledge of facts not in front of the jury or of the credibility and truthfulness of witnesses and their testimony, see, e.g., *Carroll* 26 F.3d at 1388 (stating that improper vouching occurred when prosecutor argued that the witness testifying under a plea agreement was in jeopardy if the court or government did not find the testimony truthful).

[8] Here the specific vouching allegations stem from the prosecutor's references to the

plea agreements of testifying witnesses. We have allowed a prosecutor to refer to the plea agreement of a testifying witness. See *United States v. Renteria*, 106 F.3d 765, 767 (7th Cir.1997). The prosecutor may elicit testimony about its terms, attack the credibility of the witness because of it and even refer to the plea agreement of a government witness in an attempt to deflect defense counsel's use of the agreement to attack the witness's credibility. See *United States v. Monroe*, 943 F.2d 1007 (9th Cir.1991), cert. denied, 503 U.S. 971, 112 S.Ct. 1585, 118 L.Ed.2d 304 (1992).

The potential for impropriety emerges, however, when a prosecutor explains that there is to be a recommendation to the witness's sentencing court whether the terms of the plea agreement have been adhered to. Because that recommendation is dependent upon whether the witness testifies truthfully, it is easy for a prosecutor to imply, either intentionally or inadvertently, that the prosecutor is in a special position to ascertain whether the witness was, in fact, testifying truthfully. *Carroll*, 26 F.3d at 1387. Such implication leads quickly to improper vouching. See also *United States v. Dandy*, 998 F.2d 1344, 1353 (6th Cir.1993).

In the present case, the prosecutor improperly elicited information about and referred in her argument to the plea agreement made between the government and two of its witnesses, Lincoln Williams and Larry Walker. The first improper reference to the plea agreements came during the prosecutor's opening argument when she asserted that "... if [Mr. Williams] testifies in this court truthfully, it's my intent to, as a government's representative, to recommend a 15 year sentence for him." She followed this by explaining that Mr. Walker had backed out of his original plea agreement, gone to trial, and been convicted and sentenced, but that she had "told him that [she] will go and inform the judge ... of his cooperation here, and it rests with the judge ... as to whether he wants to amend the sentence" Though she stated that each decision regarding the witnesses' sentences ultimately rested with the sentencing judge, the prosecutor used her opening argument to emphasize the role

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for witness
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Cite as 170 F.3d 546 (6th Cir. 1999)

sel's use of agreement to attack witness' credibility.

9. Criminal Law §706(3)

Prosecutor improperly vouched for witness' credibility when, in examining witness regarding his plea agreement, prosecutor elicited testimony indicating that plea agreement materialized only after prosecutor believed that witness was being truthful, thereby improperly indicating belief in witness' credibility.

10. Criminal Law §706(3, 8)

Prosecutor engaged in improper bolstering of agent's testimony when she asked agent on at least 14 occasions whether he had corroborated information obtained from informant, but did not elicit further details, except in two instances, as to manner of corroboration after agent answered affirmatively, thereby leading reasonable juror to believe that prosecutor was implying guarantee of truthfulness based on facts outside the record.

11. Criminal Law §720(5)

"Bolstering" occurs when the prosecutor implies that the witness' testimony is corroborated by evidence known to the government but not known to the jury.

See publication Words and Phrases for other judicial constructions and definitions.

12. Criminal Law §706(3)

A prosecutor may ask a government agent or other witness whether he was able to corroborate what he learned in the course of a criminal investigation; however, if the prosecutor pursues this line of questioning, she must also draw out testimony explaining how the information was corroborated and where it came from.

13. Criminal Law §720(5)

Prosecutor engaged in improper attack on testifying defendant's credibility when, in closing arguments, she called defendant a liar and con man without establishing evidentiary bases for such attacks.

14. Witnesses §277(1)

If a defendant testifies, a prosecutor may attack his credibility to the same extent as any other witness.

15. Criminal Law §720(5)

To avoid impropriety, comments of prosecutor who asserts in closing arguments that testifying defendant was lying must reflect reasonable inferences from the evidence adduced at trial.

16. Criminal Law §720(5)

Prosecutorial misconduct occurs when a jury could reasonably believe that the prosecutor was expressing a personal opinion as to the testifying defendant's credibility.

17. Criminal Law §1171.1(2.1)

Upon showing that prosecutorial comments were improper, a defendant typically must show that the impropriety was so flagrant that it required reversal, in that only a retrial could correct the error.

18. Criminal Law §706(2)

Prosecutor's conduct in eliciting agent's testimony regarding guilty pleas of individuals who did not testify at trial was flagrantly improper.

19. Criminal Law §1186.1

Although individual instances of improper comments and questions by prosecutor were insufficient, standing alone, to warrant reversal under standards applicable to flagrant and nonflagrant improprieties, new trial was warranted when numerous examples of impropriety were viewed together and in the context of entire trial.

20. Criminal Law §1171.1(2.1)

The determination of whether a prosecutor's behavior constituted prejudicial error must be made in the context of the whole trial.

21. Criminal Law §700(1)

Prosecutors must be zealous advocates and enforcers of the law while, at the same time, acting in a manner that ensures a fair and just trial.

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UNITED STATES of America,
Plaintiff-Appellee,

v.

Lewis FRANCIS (97-1129) and Louay
Francis (97-1130), Defendants-
Appellants.

Nos. 97-1129, 97-1130.

United States Court of Appeals,
Sixth Circuit.

Argued and Submitted April 20, 1998.

Decided Feb. 25, 1999.

Defendants were convicted by jury in the United States District Court for the Eastern District of Michigan, Barbara K. Hackett, J., of, inter alia, conspiracy to launder monetary instruments and criminal forfeiture. Defendants appealed. The Court of Appeals, Boyce F. Martin, Jr., Chief Judge, held that: (1) prosecutor improperly elicited information about, and referred in argument to, plea agreements between government and two witnesses; (2) prosecutor improperly vouched for witness' credibility; (3) prosecutor engaged in improper bolstering of agent's testimony; (4) prosecutor engaged in improper attack on testifying defendant's credibility; and (5) new trial was warranted when numerous examples of impropriety were viewed together and in the context of entire trial.

Reversed and remanded.

1. Criminal Law §1156(1)

Court of Appeals reviews the denial of a motion for a new trial for an abuse of discretion.

2. Criminal Law §1139

Whether statements by prosecutor amount to prosecutorial misconduct and whether they rendered the trial fundamentally unfair are mixed questions of law and fact and are reviewed de novo.

3. Criminal Law §1171.1(2.1)

When reviewing claims of prosecutorial misconduct, Court of Appeals determines first whether challenged statements were im-

proper; if they appear improper, court then looks to see if they were flagrant and warrant reversal.

4. Criminal Law §713

Standard by which courts determine flagrancy of prosecutor statements is (1) whether statements tended to mislead jury or prejudice defendant, (2) whether statements were isolated or among a series of improper statements, (3) whether statements were deliberately or accidentally before jury, and (4) total strength of the evidence against defendant.

5. Criminal Law §1171.1(2.1)

To reverse a conviction based on improper, nonflagrant statement by prosecution, a reviewing court must determine that (1) the proof of defendant's guilt is not overwhelming, (2) defense counsel objected, and (3) trial court failed to cure the impropriety by failing to admonish jury.

6. Criminal Law §706(2), 720(5)

Prosecutor improperly elicited information about, and referred in argument to, plea agreements between government and two witnesses when she emphasized role that she would have in recommending whether witnesses' sentences should be lowered as result of their testimony in defendants' trial and suggested that her recommendation would depend upon whether she personally believed that witnesses were being truthful.

7. Criminal Law §720(5)

"Improper vouching" occurs when a prosecutor supports the credibility of a witness by indicating a personal belief in the witness' credibility, thereby placing the prestige of the office of the United States Attorney behind that witness.

See publication Words and Phrases for other judicial constructions and definitions.

8. Criminal Law §706(3), 720(5)

Prosecutor may elicit testimony about terms of witness' plea agreement, attack credibility of witness because of agreement, and even refer to agreement of a government witness in attempt to deflect defense coun-

7. Criminal Law ⇨1144.13(3)

In determining whether there was sufficient evidence to permit case to be submitted to jury and to support verdict of guilty rendered, Court of Appeals views evidence in light most favorable to Government.

8. Conspiracy ⇨47(7)**Gaming** ⇨98(1)

Absent other error, evidence was sufficient to sustain convictions of conducting gambling business in violation of state law involving five or more persons and having gross revenue of more than \$2,000 on single day, and was sufficient to sustain convictions of conspiracy to commit that offense. 18 U.S.C.A. §§ 371, 1955.

9. Conspiracy ⇨47(7)**Gaming** ⇨98(1)

Evidence indicating that defendant exchanged betting line information with another person involved in gambling operation involving five or more persons and that defendant and other person made bets with each other was insufficient to sustain conviction of conducting gambling business in violation of state law involving five or more persons and having gross revenue of more than \$2,000 on a single day, and was insufficient to sustain conviction of conspiracy to commit that offense. 18 U.S.C.A. §§ 371, 1955.

10. Criminal Law ⇨691

Defendant should be afforded every reasonable opportunity to challenge testimony that tends to incriminate him and to demonstrate his innocence.

11. Criminal Law ⇨719(1)

Prosecutor's remarks in closing argument that defendant was trying to "con" the jury were improper and highly prejudicial, in that they suggested that prosecutor had information not disclosed to jury demonstrating defendant's guilt.

12. Criminal Law ⇨719(1, 3)

Prosecuting attorney may not express to jury his personal knowledge of guilt of accused or bring to its attention purported facts that are not in evidence and are prejudicial.

13. Criminal Law ⇨730(1)

Not every instance of prosecutorial misconduct requires reversal of conviction and when isolated remarks are made in course of long trial and jury is given appropriate cautionary instruction designed to overcome or to dissipate any prejudice that may have been caused, error may be harmless.

14. Criminal Law ⇨1171.1(2)

In determining whether prosecutorial misconduct is prejudicial, Court of Appeals considers degree to which remarks complained of had tendency to mislead jury and to prejudice accused, whether they were isolated or extensive, whether they were deliberately or accidentally placed before jury, and strength of competent proof introduced to establish guilt of accused.

15. Criminal Law ⇨723(2), 1171.1(6)

In prosecution for conspiracy and for conducting gambling business, prosecutor's remarks characterizing defendants' gambling activities as part of nationwide scheme that was causing substantial hardship to innocent persons, that was effecting decay of our cities, and that was financing other criminal activity, were reversibly erroneous, in view of fact that evidence was not overwhelming and was so esoteric that much of it required expert interpretation and explanation, prosecutor continued his prejudicial remarks even after court advised him to stop, and court did not admonish jury to disregard or give appropriate cautionary instruction.

Neil Fink, Michael S. Friedman, Detroit, Mich., for defendants-appellants.

Ralph B. Guy, Jr., U. S. Atty., Detroit, Mich., Laurence Leff, Atty. In Charge, U. S. Dept. of Justice, Washington, D.C., Joseph S. Davies, Jr., App. Section, Crim. Div., Dept. of Justice, Washington, D.C., for plaintiff-appellee.

Before EDWARDS, PECK and MCCREE, Circuit Judges.

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nor daughter of defendant's live-in girlfriend was ineffective in failing to object to acts of misconduct by prosecutor in improperly emphasizing evidence of defendant's "bad character" during closing argument; while decision not to object during cross-examination regarding character evidence defense had introduced may have had sound tactical basis, no explanation existed for failure to object to prosecutor's most egregious character attacks during closing argument, and basic misunderstanding by counsel in believing that State could use character evidence defense had offered for any manner it desired was objectively unreasonable. U.S.C.A. Const. Amend. 6.

24. Criminal Law ⇨338(7)

Rules addressing admission of character evidence implicitly recognize the fine yet vital distinction between the risk of prejudice borne by evidence introduced for permissible reasons, and the clear prejudice that results from an uncured and flagrantly improper use of that same evidence, and thus, even if some potential prejudice arises from the introduction of certain evidence, court generally presumes that if properly instructed by judges and guided by counsel, juries are capable of considering evidence for one purpose but not another.

25. Habeas Corpus ⇨486(2)

Determination by state court that counsel was not ineffective in failing to object to prosecutor's characterization of story told by child victim of alleged criminal sexual conduct as having been consistent over time, where there was no evidence to support such a factual assertion, involved an unreasonable application of clearly established law, and thus could provide basis for habeas corpus relief under Antiterrorism and Effective Death Penalty Act (AEDPA); failure to object fell below an objective standard of reasonableness, and was based on simple incompetence rather than sound trial strategy. U.S.C.A. Const. Amend. 6; 28 U.S.C.A. § 2254(d)(1).

26. Criminal Law ⇨641.13(2.1)

Counsel for defendant, who was charged with acts of criminal sexual conduct against minor daughter of defendant's life-in girlfriend, was ineffective in failing to object to prosecutor's characterization of story told by daughter as having been consistent over time, where there was no evidence to support such a factual assertion. U.S.C.A. Const. Amend. 6.

27. Criminal Law ⇨1144.15

Appellate court generally must presume that juries follow their instructions, and is excused from applying such a presumption only when there is a strong likelihood that the effect of the evidence would be devastating to the defendant, and that there is an overwhelming probability that the jury will be unable to follow the court's instructions. U.S.C.A. Const. Amend. 6.

28. Criminal Law ⇨641.13(2.1)

A court reviewing a claim that defense counsel was ineffective in failing to object must look at factors independent of the general effectiveness of objecting, such as other possible trial strategies, the degree of the purported misconduct, or the admissibility of the evidence in question. U.S.C.A. Const. Amend. 6.

29. Criminal Law ⇨641.13(2.1)

Defense counsel's deficient performance in failing to object during closing argument in prosecution for criminal sexual conduct to prosecutor's improper emphasis on evidence of defendant's bad character, or to prosecutor's characterization of story told by victim as having been consistent over time where there was no evidence to support such an assertion, was prejudicial, and could provide basis for postconviction relief; trial was a credibility contest, and twin acts of misconduct, in which prosecutor improperly boosted daughter's credibility by diminishing that of defendant, very likely tipped scales in daughter's favor. U.S.C.A. Const. Amend. 6.

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U.S. v. FRANCIS

Cite as 170 F.3d 546 (6th Cir. 1999)

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she would have in recommending whether the witnesses' sentences should be lowered because of their testimony in the Francis trial. The wording of her argument made it clear that her recommendation would depend on whether she personally believed Mr. Williams and Mr. Walker told the truth. ~~Because this could lead a reasonable juror to infer that the prosecutor had a special ability or extraneous knowledge to assess credibility, the statements were improper.~~

[9] The more troublesome reference to Mr. Williams's plea agreement came during his testimony as the prosecutor examined him. Through a series of questions, the prosecutor elicited information about the initiation of his plea agreement. The jury heard how the prosecutor and Mr. Williams met once and the meeting ended "abruptly" because the prosecutor "said [Mr. Williams] wasn't telling the truth, ... wasn't protecting people at that time." The jury then heard that the prosecutor and Mr. Williams met again, at which time the prosecutor finally believed him and offered him a plea agreement. Mr. Williams's testimony made it clear to the jury that the plea agreement materialized only after the prosecutor believed him. Because this indicated a belief in the witness's credibility, it was improper as well. It follows that this set of remarks constitutes improper vouching.

[10-12] Also here are the arguments that the prosecutor engaged in improper bolstering. Bolstering and vouching are much alike and go to the heart of a fair trial. Bolstering occurs when the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury. *United States v. Sanchez*, 118 F.3d 192, 198 (4th Cir.1997). A prosecutor may ask a government agent or other witnesses whether he was able to corroborate what he learned in the course of a criminal investigation. However, if the prosecutor pursues this line of questioning, she must also draw out testimony explaining how the information was corroborated and where it originated. *See United States v. Lewis*, 10 F.3d 1086, 1089 (4th Cir.1992).

Here, the prosecutor asked Agent Blackwood repeatedly whether he had corroborated

information obtained from Mr. Walker. There were at least fourteen such inquiries. Although Agent Blackwood answered each in the affirmative, he provided further detail in only two instances. He did this by properly adding that he had corroborated what Mr. Walker had told him by checking police reports, bank records, tax records, and interviews and conversations with other individuals. He also testified that he had corroborated the drug dealing by arranging for an undercover officer to purchase drugs. On all other occasions, however, Agent Blackwood responded to questions about corroboration by merely asserting that he had, in fact, corroborated the information.

The prosecutor's failure to introduce to the jury whether the information was corroborated via documents, searches, conversations, or other means, would lead a reasonable juror to believe that the prosecutor was implying a guarantee of truthfulness based on facts outside the record. This particular group of comments therefore amounts to improper bolstering.

[13-16] Lewis Francis also raises the prosecutor improperly questioning his credibility. If a defendant testifies as here, a prosecutor may attack his credibility to the same extent as any other witness. *See Raffel v. United States*, 271 U.S. 494, 497, 46 S.Ct. 566, 70 L.Ed. 1054 (1926), *see also Fitzpatrick v. United States*, 178 U.S. 304, 315, 20 S.Ct. 944, 44 L.Ed. 1078 (1900). This Court has held that a prosecutor may assert that a defendant is lying during her closing argument when emphasizing discrepancies between the evidence and that defendant's testimony. *See United States v. Veal*, 23 F.3d 985, 989 (6th Cir.1994). To avoid impropriety, however, such comments must "reflect reasonable inferences from the evidence adduced at trial." *See id.* (quoting *United States v. Goodapple*, 958 F.2d 1402, 1409-10 (7th Cir.1992)). Again, misconduct occurs when a jury could reasonably believe that the prosecutor was, instead, expressing a personal opinion as to the witness's credibility. *Taylor*, 985 F.2d at 846 (citing *United States v. Causey*, 834 F.2d 1277, 1283 (6th Cir.1987), *cert. denied*, 486 U.S. 1034, 108 S.Ct. 2019, 100 L.Ed.2d 606 (1988)).

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Cite as 228 F.3d 689 (6th Cir. 2000)

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was plainly improper. Second, we will consider whether Keston was constitutionally ineffective for failing to object to the prosecutorial misconduct. Third, we will consider whether that ineffectiveness satisfies the "cause and prejudice" exception to procedural default, allowing us to ask whether the misconduct itself provides grounds for habeas relief. We find for Washington on all three questions.

A.

Before assessing whether Keston was ineffective for failing to object to the prosecutor's actions, we must first determine whether the prosecutor committed misconduct. See generally *Cobb v. Perini*, 832 F.2d 342, 347-48 (6th Cir.1987) (rejecting claim that counsel's failure to object comprised ineffectiveness in part because it was unclear whether challenged evidence was improper); *Barton v. Morris*, No. 95-3848, 1996 WL 408504, at *2 (6th Cir. July 19, 1996) (unpublished decision) (concluding that counsel's failure to object to prosecutor's closing argument was not ineffective because "those comments did not amount to prosecutorial misconduct and would not have provided the basis for action by the trial judge"). Juxtaposing precedent from this circuit alongside the trial record convinces us that several aspects of the prosecutor's behavior clearly crossed the line into plain and prejudicial impropriety.

1.

[3,4] First, we address the prosecution's emphasis on Washington's "bad character." A fundamental rule of evidence is that a defendant's "bad character" cannot be used to argue that the defendant committed the crime for which he is being tried, or had the propensity to commit that crime. See, e.g., Fed.R.Evid. 404(a) ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion..."); Mich. R. Evid. 404(a) (same); *Michelson v. United*

States, 335 U.S. 469, 476, 69 S.Ct. 213, 93 L.Ed. 168 (1948) (stating that improper character evidence "weigh[s] too much with the jury and ... overpersuade[s] them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge"); *United States v. Vance*, 871 F.2d 572, 575 (6th Cir.1989) (providing that "bad acts evidence is not admissible to prove character or criminal propensity" under Fed. R.Evid. 404(b)); *United States v. Ring*, 513 F.2d 1001, 1004 (6th Cir.1975) (stating that in jury trials, evidence of a criminal defendant's bad acts or prior misconduct is inadmissible to show criminal propensity because it "tends to confuse the issue of guilt or innocence of the specific offenses charged and to weigh too heavily with the jury"). When a prosecutor dwells on a defendant's bad character in this prohibited manner, we may find prosecutorial misconduct. See, e.g., *Cook v. Bordenkircher*, 602 F.2d 117, 120 (6th Cir.1979) (noting that the "prosecutor's misconduct in this case is severe" due to his "persistent Ad hominem attack on the petitioner's character").

[5,6] In this case, we find that while the evidence as to Washington's character was admissible for certain limited purposes, the prosecutor went far beyond the bounds of permitted conduct when presenting that evidence to the jury. Because Keston introduced much of this evidence as part of his defense strategy, see *infra*, and because aspects of Washington's character shed light on why Tamara had not informed others of the alleged acts, we do not find that the State's cross-examination of Washington constituted prejudicial misconduct on its own. However, the prosecutor's animated recitation of this character evidence during closing arguments was plainly improper. In his initial summation, the prosecutor improperly implied that the jurors should consider Washington's unseemly character when rendering their verdict; in his rebuttal, he explicitly urged them to do so. Meanwhile, he attacked

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to stand trial." *Drope*, 420 U.S. at 180, 95 S.Ct. 896.

[11] The first of the trial court's findings was unreasonable. It is true that a finding by a trial court regarding credibility is ordinarily the kind of finding to which we would defer on collateral review. See *Thompson v. Keohane*, 516 U.S. 99, 111 S.Ct. 457, 133 L.Ed.2d 383 (1995). But here the factfinding procedure by the judge was clearly inadequate. Defense counsel twice related to the court that Torres now believed that defense counsel and the court were part of the conspiracy against Torres; counsel then suggested that a competency hearing would be appropriate. The court refused to order a hearing. It concluded, without questioning Torres, that (1) Torres was simply continuing his effort to remove his counsel, (2) that Torres wanted to get rid of counsel because she was not doing what he wanted her to do, and (3) that Torres was "no different than any other defendant who is dissatisfied with his attorney."

In light of the previous medical evaluation by Dr. Wells, it was unreasonable for the court not to make a more complete inquiry into the nature of defense counsel's statement that Torres now believed the conspiracy against him included his counsel and the trial judge. Although Wells had opined that Torres was competent to stand trial, he also concluded, on the strength of testing designed to detect dissembling, that Torres was "fully credible in his statements [that he was a victim of a medical conspiracy] and not seeking consciously to deceive in any way." Thus, the Wells evaluation should have alerted the trial court to the strong possibility that Torres was not dissembling when he told his attorney that he now believed she and the trial judge were part of the conspiracy against him. At the very least, the trial court could not have concluded reasonably that Torres was disingenuous without inquiring of Torres himself, or of Dr. Wells. On these facts, merely observing Torres's

5. In contrast, the trial court in *Maggio* had made specific findings of fact that justified its

demeanor in court would be insufficient factfinding to make a determination about Torres's credibility.

[12] The trial court's second finding, that there was no bona fide doubt regarding Torres's competence, was conclusory and not fairly supported by evidence on the record.⁵ After dismissing the notion that Torres's conspiracy delusion had now spread to his attorney and the court, the judge stated "[u]nless there is something specific, the court will not declare a doubt." But there was more than sufficient evidence before the trial judge at that time. First, defense counsel had proffered evidence that the defendant would no longer be able to assist rationally in his defense because he believed his attorney was part of a greater conspiracy against him. See *United States v. Nagy*, No. 96-CR601, 1998 WL 341940, at *7 (S.D.N.Y. June 26, 1998) (defendant's paranoid delusions of conspiracy against him rendered him unable to assist in his defense despite factual understanding of role of lawyers and judge in courtroom), *aff'd* 173 F.3d 847, 1999 WL 245869 (2d Cir.), *cert. denied*, — U.S. —, 120 S.Ct. 105, 145 L.Ed.2d 89 (1999); *United States v. Blohm*, 579 F.Supp. 495, 504-05 (S.D.N.Y. 1983) (amended opinion). Torres's defense counsel was in the best position to evaluate Torres's competence and ability to render assistance. See *Medina v. California*, 505 U.S. 437, 450, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992). Her recommendation to the judge, while not necessarily sufficient to create a bona fide doubt, should have been considered seriously by the court. See *id.*

[13] Finally, defendant's unusual and self-defeating behavior in the courtroom suggested that an inquiry into competence was required. The district court catalogued Torres's peculiar behavior: he insisted on wearing jailhouse blues; threatened to assault his attorney; insisted, after being ordered shackled, to be handcuffed

refusal to hold a competency hearing. See *Maggio*, 462 U.S. at 113-15, 103 S.Ct. 2261.

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14. Criminal Law \S 641.13(1)

To prevail on ineffective assistance of counsel claim, defendant must show that counsel's performance was deficient, in that it involved errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment, and that those deficiencies were prejudicial to the defense. U.S.C.A. Const.Amend. 6.

15. Criminal Law \S 641.13(1)

To establish deficient performance by counsel, defendant must show that counsel's conduct fell below an objective standard of reasonableness, and that counsel's identified acts and omissions were outside the wide range of professionally competent assistance. U.S.C.A. Const.Amend. 6.

16. Criminal Law \S 641.13(1)

In determining whether counsel's performance was deficient, court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and defendant bears the burden of overcoming the presumption that the challenged action might be considered sound trial strategy. U.S.C.A. Const.Amend. 6.

17. Criminal Law \S 641.13(1)

In evaluating an ineffective assistance of counsel claim, courts must not view a trial in hindsight, but must evaluate the reasonableness of counsel's performance within the context of the circumstances at the time of the alleged errors. U.S.C.A. Const.Amend. 6.

18. Criminal Law \S 641.13(2.1)

Counsel's failure to object to prosecutorial misconduct constitutes deficient performance when that failure is due to clear inexperience or lack of knowledge of controlling law, rather than reasonable trial strategy. U.S.C.A. Const.Amend. 6.

19. Criminal Law \S 641.13(1)

To show that he suffered prejudice as result of counsel's deficient performance, defendant must demonstrate that there is

a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that but for counsel's unprofessional errors, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 6.

20. Criminal Law \S 641.13(1)

Essential question in determining if defendant suffered prejudice as result of counsel's deficient performance is whether better lawyering would have produced a different result. U.S.C.A. Const.Amend. 6.

21. Habeas Corpus \S 486(2)

Determination by state court that counsel was not ineffective in failing to object to misconduct by prosecutor in placing improper emphasis on evidence of defendant's bad character during closing argument involved an unreasonable application of clearly established law, and thus could provide basis for habeas corpus relief under Antiterrorism and Effective Death Penalty Act; counsel's failure to object fell below an objective standard of reasonableness and was outside the wide range of professionally competent assistance, and resulted in prejudice. U.S.C.A. Const.Amend. 6; 28 U.S.C.A. \S 2254(d)(1).

22. Criminal Law \S 641.13(6)

Decision by counsel for defendant charged with acts of criminal sexual conduct against minor daughter of defendant's live-in girlfriend not to object during State's cross-examination of defendant regarding evidence of defendant's bad character, which was part of strategy of providing jury a basis for disbelieving testimony of victim, represented a reasonable tactical decision, and did not constitute ineffective assistance of counsel; strategy was one of few possible ways to "spin" evidence of defendant's unappealing character into a potentially exculpatory use. U.S.C.A. Const.Amend. 6.

23. Criminal Law \S 641.13(2.1)

Counsel for defendant charged with acts of criminal sexual conduct against mi-

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correctly identified the governing legal principle from the Supreme Court's decisions, but unreasonably applied that principle to the facts of the case, it may grant petition for writ of habeas corpus. 28 U.S.C.A. § 2254(d)(1).

3. Criminal Law §376

A defendant's bad character cannot be used to argue that the defendant committed the crime for which he is being tried, or had the propensity to commit that crime. Fed. Rules Evid. Rule 404(a), 28 U.S.C.A.

4. Criminal Law §722.3

When a prosecutor dwells on a defendant's bad character in an attempt to argue that defendant committed charged crime, or had propensity to commit that crime, court may find prosecutorial misconduct.

5. Criminal Law §706(4)

Prosecutor did not engage in misconduct by cross-examining defendant regarding character evidence in prosecution for acts of criminal sexual conduct against daughter of defendant's live-in girlfriend, where defendant had introduced much of evidence in question as part of defense strategy, and aspects of defendant's character shed light on why child victim had not informed others of alleged acts.

6. Criminal Law §722.3

Prosecutor engaged in misconduct by making animated recitation during closing argument of evidence relating to defendant's character, in which he emphasized that defendant did not work, beat his live-in girlfriend regularly, consumed alcohol excessively, and did not make payments on girlfriend's home, in prosecution for acts of criminal sexual conduct against girlfriend's minor daughter; prosecutor explicitly urged jurors to consider defendant's unseemly character when rendering their verdict, and implied that criminal acts charged "fit" evidence of defendant's character and lifestyle.

7. Criminal Law §720(5)

Prosecutor engaged in misconduct when he sought to bolster testimony of child victim of alleged criminal sexual conduct by characterizing her story as having been consistent over time, where there was no evidence to support such a factual assertion.

8. Criminal Law §719(1)

Actions of prosecutor in misrepresenting facts in evidence can amount to substantial error, because doing so may profoundly impress a jury and may have a significant impact on the jury's deliberations.

9. Criminal Law §1171.3

Asserting facts that were never admitted into evidence may mislead a jury in a prejudicial way, particularly when a prosecutor misrepresents evidence, because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligation as a representative of a sovereignty.

10. Criminal Law §720.5

It is always improper for a prosecutor to suggest that a defendant is guilty merely because he is being prosecuted or has been indicted.

11. Criminal Law §720(1)

It is always improper for a prosecutor to imply to a jury that an underlying factual predicate of a crime must be true due to the fact of indictment or prosecution.

12. Criminal Law §641.13(1)

An essential ingredient of the Sixth Amendment right to counsel is that counsel provide constitutionally effective assistance. U.S.C.A. Const. Amend. 6.

13. Criminal Law §641.13(1)

Benchmark in determining effectiveness of counsel is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. U.S.C.A. Const. Amend. 6.

Closing argument
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STOUT v. J.D. BYRIDER

Cite as 228 F.3d 709 (6th Cir. 2000)

709

685, 709 (6th Cir.1994); *United States v. Morrow*, 923 F.2d 427, 432 (1991).

important roles is to ensure that the prosecutor does not transgress those bounds.

[37] As explained in Part III.A, the challenged aspects of the State's closing argument were clearly improper. We also find the improprieties to have been sufficiently flagrant to satisfy the four prongs of *Boyle* and warrant reversal. First, as stated above, there was a strong likelihood that the improper statements would have misled the jury and prejudiced the defendant, particularly considering the long delay since the actual testimony of the witnesses. Second, the comments were extensive, comprising part of the prosecutor's continuous effort to have the jury determine credibility based on improper considerations—either statements not in evidence or improper character assessments. Third, it is clear that the remarks were deliberately made, with the prosecutor repeating his “fit” theory throughout closing argument. And fourth, there was no evidence against Washington outside of Tamara Beard's account, which the prosecutor's misconduct impermissibly bolstered. In short, the prosecutor's misconduct was sufficiently flagrant to violate Washington's due process rights.

In this case, both attorneys failed to perform their respective duties. We find that their failure deprived Washington of his constitutional rights, and that the state courts' conclusions to the contrary were objectively unreasonable. We therefore **REVERSE** the district court and grant a conditional writ of habeas corpus, giving the State of Michigan ninety days in which to provide Washington a new trial or release him.



Yes my case
was served by
the state

James D. STOUT; Shirley A. Brown,
Plaintiffs-Appellants,

v.

J.D. BYRIDER, a/k/a Docherty Motors,
Inc.; T & J Acceptance Corporation,
d/b/a Carnow Acceptance Company,
Defendants-Appellees.

No. 99-3854.

United States Court of Appeals,
Sixth Circuit.

Argued: June 23, 2000

Decided and Filed: Sept. 8, 2000

IV.

[38-40] As the people's representative in our system of justice, a prosecutor must adhere to the rules and principles that ensure that a jury determines a defendant's guilt based on the evidence before it. In a close credibility contest such as this, with horrible acts alleged but scant hard evidence for the jury to weigh, a prosecutor must be doubly careful to stay within the bounds of proper conduct. See *Martin v. Parker*, 11 F.3d 613, 616-17 (6th Cir.1993) (stating that because cases involving sexual abuse “turn on the relative credibilities of the defendant and the prosecuting witness . . . , a strict adherence to the rules of evidence and appropriate prosecutorial conduct is required to insure a fair trial”). One of defense counsel's most

Buyers of used vehicle dealership brought prospective class action against dealership, and finance company, asserting claims for fraud, and under Ohio Consumer Sales Practices Act (OCSA) and federal Truth in Lending Act (TILA). The United States District Court for the Northern District of Ohio, James S. Gwin, J., denied class certification, and granted defendants' motion to compel arbitration, 50 F.Supp.2d 733. Plaintiffs appealed. The Court of Appeals, Clay, Circuit Judge, held that: (1) arbitration agreements entered by buyers

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derstanding of universal trial and evidence principles falls well below an objective standard of reasonableness. See *Gravley*, 87 F.3d at 786 (stating that when counsel failed to object because of a lack of awareness of the law, *Strickland* was violated); *Rachel*, 590 F.2d at 204 (concluding that the Sixth Amendment was violated because attorneys' inexperience, inattention or lack of knowledge of the law led to their failure to object to misconduct). For similar reasons, we find that the state trial court's analysis of this issue was objectively unreasonable. Once again, that court concluded that the prosecutor had only sought to provide a "factual backdrop" to the crime as well as an explanation for Tamara's silence after the alleged acts, J.A. at 48-49, when it is crystal clear from the record that the State went well beyond that limited use, proffering an argument that was a prototypical example of how character evidence should not be used. Not having recognized the clear predicate problem itself, the trial court's conclusion that Keston did not violate *Strickland* by failing to object to that problem is thus inherently flawed. To characterize this conclusion as an "objectively reasonable" application of *Strickland* would be to dilute our review under the AEDPA to a generous apology for the clearest of errors.

[24] Finally, we note that while the defense's strategy carried an inherent risk of some prejudice, that added risk did not diminish the far greater prejudice that resulted from Keston's inexplicable silence as the prosecutor misused that same evidence for patently improper purposes. Our rules addressing character evidence implicitly recognize the fine yet vital distinction between the *risk of prejudice* borne by evidence introduced for permissible reasons and the *clear prejudice* that results from an uncured and flagrantly improper use of that same evidence.

to object to that because you wanted it brought out; didn't you?

A: That's correct.

Q: You were just going to use it in a different way than I used it.

Thus, even if some potential prejudice arises from the introduction of certain evidence, this Court generally presumes that if properly instructed by judges and guided by counsel, juries are capable of considering evidence for one purpose but not another. See generally *Richardson v. Marsh*, 481 U.S. 200, 211, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987). In this case, an objection would have prompted the judge to inform the jurors that, counter to the prosecutor's suggestion, they could not convict Washington because he was the "type" of person who would commit the alleged crime; we then would presume that the jury heeded that instruction in rendering its verdict. On the other hand, Keston's silence allowed the prosecutor's improper use of that evidence, as well as its improper suggestions to the jury of how to consider that evidence, to go uncorrected. For this reason, and because this was a close case riding on Washington's credibility, see *infra*, Washington was prejudiced by his counsel's failure to object to the closing argument.

b.

[25, 26] We also find that Keston's failure to object to the State's improper characterization of Tamara's statements to others constitutes a second instance of constitutional ineffectiveness. Again, we find the trial court's analysis of Keston's ineffectiveness and "trial strategy" to have been objectively unreasonable.

Keston's explanation of why he did not object to the prosecutor's characterization of statements not in evidence is again unconvincing. At the *Ginther* hearing, he explained that he feared an objection would do more harm than good because it would focus the jurors' attention on the prosecutor's statement even if the court

A: It would be rather inconsistent of me to object.

J.A. at 311-12 (emphasis added).

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KEPP

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>1:27:34 PM</u>	CHANDLER	WERE YOU NO LONGER AFRAID OF THE BLACK PEOPLE, SO YOU THRU THE GUN AWAY "I WANTED TO CALL MY FAMILY SO THEY COULD TELL ME WHAT TO DO ETC.
<u>1:28:27 PM</u>		YOU WENT TO IVAN'S APARTMENT
<u>1:29:03 PM</u>		IDENTIFICATION EXHIBIT 109 "PHOTO OF IVAN VASQUEZ"
<u>1:29:29 PM</u>		BENCH CONFERENCE
<u>1:30:25 PM</u>	CHANDLER	YOU WENT TO MR. VASQUEZ APT., NEXT THREE DAYS YOU DID NOT MAKE ANY PHONECALLS
<u>1:31:17 PM</u>		WHEN POLICE SHOWED UP AND KNOCKED ON DOOR YOU WENT TO BACK AND HID BEHIND A DOOR, YOU WERE ARRESTED AND THEY TOOK YOU TO CCDC, AT THAT TIME WHEN BOOKED IN THEY GAVE YOU INFORMATION ON HOW TO USE THE PHONE ETC.
<u>1:32:17 PM</u>		YOU ASKED YOU AUNT IN SPANISH TO GO AND PICK UP GUN, YOU USED SLANG WORDS YOU USED THE WORD TOY, BECAUSE YOU KNEW SOMEONE WAS RECORDING
<u>1:33:14 PM</u>		YOU WERE NOT QUITE SURE SHE WOULD DO WHAT YOU ASKED HER TO DO
<u>1:33:32 PM</u>		YOU SAID TELL MOM I AM SORRY
<u>1:34:04 PM</u>		NEXT CALL YOU MADE WAS TO CRIMSON MAES, YOU SAID A DIFFERENT WORD IN SLANG GO GET THE THING BAM BAM, I KNEW THEY WERE LISTENING
<u>1:34:56 PM</u>		YOU BELIEVED IF THE POLICE COULD NOT FIND THE GUN IT WOULD HELP YOUR CASE, "I THINK THAT THEY WOULD LET ME OUT"
<u>1:35:26 PM</u>		WHEN YOU MADE CALL TO CRIMSON MAES YOU IDENTIFIED YOURSELF AS WEIZEL
<u>1:36:51 PM</u>		YOU WERE ABLE TO TAKE YOUR ITEMS AND PUT IN TRUNK OF CA, ONE OF THE ITEMS WAS A NOTE YOU WROTE
<u>1:37:54 PM</u>		BENCH CONFERENCE
<u>1:39:12 PM</u>	CHANDLER	IDENTIFICATION EXHIBIT 110 "LETTER WRITTEN BY ALBERT"
<u>1:39:48 PM</u>		OFFERS EXHIBIT / ADMITTED OVER THE OBJECTIONS
<u>1:40:57 PM</u>		I WAS TRYING TO BECOME A RAP ARTIST, HIP HOP
<u>1:41:28 PM</u>		ALBERT IS READING NOTE
<u>1:42:56 PM</u>		BENCH CONFERENCE
<u>1:43:16 PM</u>		COURT EXCLUDES EXHIBIT 110
<u>1:43:59 PM</u>		TALK ABOUT THE DAY YOU SHOT ELADIO, YOU WENT TO HOUSE THAT YOU WERE NOT TOLD TO GO THERE, WHEN YOU ARRIVED THE SCREEN WAS LOCKED
<u>1:44:52 PM</u>		MOST OF MY IMPORTANT ITEMS WERE THERE

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COURTROOM ONE

Time	Speaker	Note
<u>1:13:51 PM</u>		YOU ASKED GUN SHOP OWNER, IF HE COULD NOT GET YOU A GUN WHERE CAN I GET A GUN
<u>1:14:31 PM</u>		YOU WENT AND FOUND A GUN, FROM THIS GUY I USED TO BUY SOME WEED FROM,
<u>1:15:24 PM</u>		HOW MUCH DID YOU SPEND ON THIS WEAPON "\$75"
<u>1:16:29 PM</u>		YOU WENT TO WALMART JULY 11, YOU GAVE HIM \$30 TO BUY AMMO
<u>1:16:59 PM</u>		MR. PATTERSON CAME BACK AND GAVE YOU BOX OF AMMO
<u>1:17:18 PM</u>	COSBY	OBJECTION
<u>1:17:26 PM</u>	COURT	THAT IS WHAT I REMEMBER
<u>1:17:33 PM</u>	CHANDLER	YOU GOT THE AMMO, "I GOT IT HE HANDED IT TO ME AND I SAID THANKS"
<u>1:18:19 PM</u>		YOU WERE IN SUCH FEAR FOR YOUR LIFE, YOU BOUGHT AMMO AS SOON AS YOU GOT HANDGUN
<u>1:18:53 PM</u>		YOU WOULD NOT CARRY AN EMPTY HANDGUN "I WOULD EXPLAINS WHY"
<u>1:19:42 PM</u>		IT WAS IMPORTANT TO YOU TO GET BULLETS FOR THIS GUN ASAP
<u>1:20:57 PM</u>		LESS THAN 24 HOURS LATER AFTER YOU BOUGHT BULLETS YOU KILLED ELADIO "YES"
<u>1:21:28 PM</u>		TALK ABOUT CRUTCHES, MY WHOLE LEFT SIDE IS DISABLED, I CAN BARELY WALK,
<u>1:22:27 PM</u>	COSBY	WITHDRAWS OBJECTION
<u>1:22:41 PM</u>	CHANDLER	YOU WERE ABLE TO GET AWAY FROM SCENE WHERE YOU SHOT ELADIO, LESS THAN 30 SECONDS
<u>1:23:02 PM</u>		DID YOU SEE POLICE ARRIVE, YOU WERE GONE BEFORE POLICE GOT THERE, AS YOU WERE GOING ACROSS STREET, YOU SAW A MAN AT LAWN MOWER SHOP, YOU DID NOT SAY ANYTHING TO LAWN MOWER REPAIR MAN ABOUT NEEDING HELP, THEN YOU CROSSED RAGS TO RICHES AND YOU THRU GUN BEHIND RAGS TO RICHES "YES"
<u>1:24:50 PM</u>		YOU HAD YOUR CELLPHONE WITH YOU "YES, I BELIEVE IT WAS IN MY POCKETS IN MY PANTS, YOU CALLED ELADIO AND DEBRA ABOUT 30 OR 40 TIMES THAT MORNING, "THEY WOULD NOT ANSWER, I WAS TRYING TO CALL MY MOM NOT ELADIO" I CALLED THE HOME PHONE, I WANTED MY EVERYTHING, JUST THE LITTLE THINGS
<u>1:26:27 PM</u>	COSBY	OBJECTION
<u>1:26:34 PM</u>		I WILL ANSWER THIS, I HAD THE CELLPHONE IN YOUR POCKET YOU DID NOT CALL POLICE, AS YOU RAN BY RAGS TO RICHES YOU DUMPED GUN IN ALLEY
<u>1:27:15 PM</u>	COSBY	OBJECTION

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ord. This justification is not strategy, but absolute folly. First, it overlooks the fact that the prosecutor's statement that the "story never changed" was not based on any evidence in the record. The jury therefore had no basis to conclude whether the characterization was true or not; similarly, Keston had no way to rebut the prosecutor's assertion without also referring to conversations not in evidence. Indeed, while Keston testified to the trial court that he had "intended" to argue to the jury that Tamara's statements to the doctor were inconsistent with her stories to others, he did not in fact do so. Although he referred to the doctor's notes that she had denied penetration, Keston certainly did not emphasize that this showed that Tamara's stories had been inconsistent. In fact, Keston himself echoed the prosecution's suggestion that the content of Tamara's discussions was in evidence when he argued that all of Tamara's statements came with Cora Beard by her side. "You heard from the witness stand, she said this, said that. She always identified and repeated what was said." J.A. at 264-65. But, contrary to Keston's words, the jury had not in fact heard any witnesses testify as to what Tamara had told them.

Finally, although the trial court attempted to rationalize this "impeachment defense," its reasoning is equally flawed. The trial court's explanation reads as follows:

[Keston] related that his lack of objection was grounded on trial strategy based on his awareness that the victim had given previous inconsistent statements during the investigative stage of the case. In proper cases, a decision not to object to the prosecutor's trial efforts may be considered sound trial strategy. Cf. *Darden v. Wainwright*, 477 U.S. 168, 106 S.Ct. 2464, 2471, 2472, 91 L.Ed.2d 144 (1986). . . . In this case defense counsel's strategy involved impeachment with inconsistent statements and the contrasting the same with the claim that

the victim's reporting of crime was consistent.

J.A. at 50. Like Keston's own words, this explanation wholly fails to appreciate that "the claim" of consistency involved statements never admitted into evidence. Moreover, while the trial court cited *Darden v. Wainwright*, 477 U.S. 168, 182, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986) in support of its argument that a "decision not to object to the prosecutor's trial efforts may be considered sound trial strategy," *Darden*'s holding provides no support for its decision. The cited portion of *Darden* addresses prosecutorial misconduct that the Supreme Court found insufficient to constitute a due process violation; as part of the discussion, the court noted that "defense counsel made the tactical decision not to present any witness other than petitioner." *Id.* at 182, 106 S.Ct. 2464 (emphasis added). The decision in no way condones a lawyer's failure to object to plain misconduct as legitimate trial strategy.

In short, Keston's failure to object fell below an objective standard of reasonableness and constituted an omission outside the wide range of professionally competent assistance. Washington has shown that the failure to object was based on simple incompetence, and not on sound trial strategy. Because the trial court's conclusion merely echoed Keston's deeply flawed justification, its application of *Strickland* was objectively unreasonable.

3.

[29] In addition to finding constitutionally defective performance, we also believe that the failure to object to these statements prejudiced Washington's case. As both parties agree, this trial was a credibility contest. There was no evidence in the record indicating Washington's guilt outside of Tamara's own allegations. Thus, outside of the substance of Washington's and Tamara's testimony, nothing was more important to the case than the indicia that one story was more believable than the other. In such a close case, the prosecu-

U.S. v. CARROLL

Cite as 26 F.3d 1380 (6th Cir. 1994)

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cases, the end result would probably have been the same regardless of which test was used. Nevertheless, we find it necessary to clarify our doctrine regarding when prosecutorial misconduct in a closing argument constitutes reversible error for three reasons. First, the use of three different standards is confusing both for lower courts and for litigants. Second, even if everyone usually reaches the same net result, the process of reaching this result is more difficult when our doctrine is so murky. Third, and most important, situations sometimes arise, though perhaps only infrequently, in which the choice of doctrine determines the result. One very important example of this is found in the case of *Sullivan*, in which isolated remarks by the prosecutor were so prejudicial that a new trial was necessary. 937 F.2d at 1157. Had the panel applied the *Thomas* test, it could not have reached this result. The court made this manifestly clear when it held:

There are instances where a single misstep on the part of the prosecutor may be so destructive of the right to a fair trial that reversal is mandated. See *Pierce v. United States*, 86 F.2d 949 (6th Cir.1936). We realize that such instances may be rare, but we believe this case exemplifies a single misstep so destructive to defendant's right to a fair trial that it constitutes reversible error.

Id. at 1150. It turns out that the instant case presents a second example.

Just last year, the *en banc* court expressly applied the *Bess* test when we considered the issue of prosecutorial misconduct in a closing argument in *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir.1992). In light of this fact, and for the reasons stated in *Bess*, not only will we apply the *Bess* approach in the present case, but we also believe that *Bess*

1992) (*en banc*) (applying *Bess* test), cert. denied, — U.S. —, 113 S.Ct. 2969, 125 L.Ed.2d 668 (1993); *United States v. Warner*, 971 F.2d 1189, 1205 (6th Cir.1992) (applying *Thomas* test); *United States v. Driscoll*, 970 F.2d 1472, 1484-85 (6th Cir.1992), cert. denied, — U.S. —, 113 S.Ct. 1056, 122 L.Ed.2d 362 (1993) (applying *Leon* test); *United States v. Chambers*, 944 F.2d 1253, 1272 (6th Cir.1991), cert. denied, — U.S. —, 112 S.Ct. 1217, 117 L.Ed.2d 455 (1992) (applying *Leon* test); *United States v.*

ought to be used in all subsequent cases involving non-flagrant improper prosecutorial remarks. We will also use the factors introduced in *Leon* to elucidate the concept of "flagrancy" when applying the *Bess* test.

2. The Prosecutor's Remarks in the Present Case Were Improper

Under the *Bess* approach, our first task is to determine whether the prosecutor's remarks in the present case were improper. In *United States v. Krebs*, 788 F.2d 1166, 1176 (6th Cir.1986), cert. denied, 479 U.S. 930, 107 S.Ct. 400, 93 L.Ed.2d 353 (1986), the prosecutor made the following statements in her closing argument: "I want to suggest to you that in this trial testimony [the witness] was telling the truth.... Basically, she had no reason to lie." Even though we recognized that "I suggest" or "I submit" is not equivalent to "I believe", we found that "the effect of the two statements taken together can be reasonably construed to be based on personal belief." *Id.* at 1176-77 (citing *Bess*). We not only found that this constituted misconduct calling for the trial court to take corrective measures, but we also characterized the prosecutor's conduct as "inexcusable." *Id.* at 1177.⁹

Similarly, in *United States v. Dandy*, 993 F.2d 1344, 1353 (6th Cir.1993) (citing *Bess*), we held: "It was improper for the prosecutor to state [in his closing argument] that [a witness] is honest. Such a statement conveys a conviction of personal belief regarding the witness's veracity." The error might have been reversible had the trial court not immediately instructed the jury that all assertions are to be made from the evidence. See also *United States v. Hart*, 640 F.2d 856, 858-59 (6th Cir.) (holding that various expressions of personal belief by the prosecutor in closing argument were improper, warrant-

Sullivan, 937 F.2d 1146, 1156-57 (6th Cir.1991) (applying *Ashworth* standard, but citing *Bess* with approval).

9. Ultimately, the *Krebs* court found that, in light of the substantial evidence of guilt and the trial court's efforts "to take corrective measures to eliminate the resulting prejudice," the misconduct did not justify reversal. 788 F.2d at 1177.

more prosecutorial
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SA 12
T2 S+Mony
Howditch
Bozalez
✓ Bofie/C
Country
SAM
T2 11
Lawyer

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
10:24:46 AM		WHO ELSE DID YOU CALL, HE WAS NOT A FRIEND, I TOLD HIM TO GET THE THING, DO YOU KNOW OF ANYBODY HAS THAT GUN
10:25:33 AM		THERE WAS A GUY IN FRONT OF STORE OF RAGS TO RICHES I BELIEVE HE GOT THE GUN, I JUST HAD SOX AND BOXERS
10:26:34 AM		DID YOU PLAN ON KILLING MR. ROBLEDO "NO"
10:27:11 AM		WERE YOU THERE THAT DAY TO AMBUSH YOUR MOM'S BOYFRIEND "CAN I SPEAK MY MIND", IF I WANTED TO KILL MY MOM OR ROBLEDO, I COULD GO IN THERE AND GO TO MY ROOM AND GET SOMETHING TO EAT. ETC.
10:28:14 AM		WHEN HE TOLD YOU HE WAS GOING TO GET PISTOLA "THAT IS A PISTOL" THAT WAS NOT HIS AMMO IN GARAGE
10:28:59 AM		I KNEW HE HAD A WEAPON, I USED TO SMOKE MARIJUANA I WAS LOOKING FOR MONEY AND I SAW A GUN IN HIS DRAWER
10:29:40 AM		I THOUGHT I WAS IN DANGER
10:29:53 AM		BENCH CONFERENCE
10:30:37 AM	COURT	GONNA TAKE A BREAK
10:31:21 AM		JURY EXCUSED FROM COURTROOM
10:31:36 AM	OFF RECORD	
11:03:22 AM		COURT IN SESSION JURY BEING SEATED IN BOX, DFT AND ALL PARTIES PRESENT
11:03:58 AM	COURT	INSTRUCTS JURORS GOING TO AN EARLY LUNCH BE BACK BY 12:45 P.M.
11:04:37 AM	RECESS	
12:49:46 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES ARE PRESENT
12:50:29 PM	CHANDLER	DFT PUT FORWARD THAT THE VICTIM WAS A FIRST AGRESSOR, ANY TYPE OF SPECIFIC CONDUCT
12:51:31 PM		WHAT TRAIT DO YOU THINK IS DELIBERATE AND WILLFUL MURDER
12:51:52 PM	CHANDLER	RESPONDS, NOW WE HAVE AN OPPORTUNITY THAT OUR VICTIM WAS NOT THE AGRESSOR
12:52:26 PM	COSBY	AS FAR AS THE SITUATION OF THE JAILER, HAD NOTHING TO DO WITH HIS CHARACTER ETC.
12:52:50 PM	CHANDLER	READS RULE 404-A-2 SEC. B
12:54:32 PM	COURT	WILL LET YOU GO AHEAD AND DO IT, BETTER WAY TO DO IT
12:54:50 PM	COSBY	I WILL ASK YOU TO RE VISIT SEXUAL ISSUE
12:55:21 PM	COURT	OBJECTION NOTED
12:55:43 PM	DFT	COMMENTS

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:36 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX. 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE CROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

prosecutor misrecalled

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>2:14:36 PM</u>	COURT	HE HAS BECOME EXPLOSIVE AND SHOOTS OFF HIS MOUTH, GO TALK TO HIM AND SEE WHAT WE WILL DO, WE ARE CLOSE TO THE END
<u>2:15:25 PM</u>	RECESS	
<u>2:36:30 PM</u>		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
<u>2:37:06 PM</u>	COSBY	HAVE DISCUSSED WITH MY CLIENT HIS OPTIONS HE HAS STATED HE FEELS HE NEEDS ME, I TOLD HIM EITHER I REPRESENT HIM OR HE REPRESENTS HIMSELF, I CAUTIONED HIM HE NEEDS TO OBEY COURT RULES, HE SAID HE WOULD RATHER HAVE SOMEONE ELSE BUT HE NEEDS ME, I EXPLAINED TO HIM AS FAR AS THE LAST WITNESS, THE WITNESS TELLS ME HE DOES NOT REMEMBER IN FRONT OF THE JURY, SO RATHER THAN CALL SOMEONE TO STAND THEY DON'T REMEMBER I JUST DON'T ASK THAT QUESTION, THERE ARE QUESTIONS THAT ARE NOT ASKED FOR REASONS
<u>2:39:17 PM</u>	COURT	LET THE RECORD REFLECT THAT MR. RAMIREZ HAS RETURNED TO THE COURTROOM AND MR. COSBY WILL BE CONTINUING HIS REPRESENTATION, NOT ANOTHER OPPORTUNITY TO CHANGE COUNSEL
<u>2:39:55 PM</u>		ADVISES DFT THAT THERE IS AUTHORITY THAT ALLOW YOU TO SIT IN ANOTHER ROOM TO WATCH TRIAL, IT IS AN OPTION IF YOU CONTINUE TO BE DISRUPTIVE YOU WILL SIT IN ANOTHER ROOM AND VIEW TRIAL BY VIDEO
<u>2:40:48 PM</u>	COSBY	HE ASKED ME IF IT WAS BETTER TO SIT IN ANOTHER ROOM, I TOLD HIM IT WOULD BE AGAINST HIS INTEREST TO VIEW BY VIDEO
<u>2:41:36 PM</u>	CHANDLER	I DON'T HAVE ANY XEX FOR MR. RAMIREZ BROTHER OF DFT
<u>2:42:28 PM</u>	COSBY	I HAVE TOLD HER WHAT SHE CAN SAY AND CANNOT SAY
<u>2:42:40 PM</u>		BENCH CONFERENCE
<u>2:44:43 PM</u>	COSBY	REGARDING PHOTO OF IVAN VASQUEZ SHOWING PHOTO OF HIM IN BOOKING, AND RECEIVED THIS LETTER
<u>2:46:00 PM</u>	CHANDLER	RELEVANCE TO THE PICTURE, COURT WILL NOT ALLOW PHOTO
<u>2:47:19 PM</u>		JURY BEING BROUGHT INTO COURTROOM
<u>2:48:04 PM</u>		OFF RECORD
<u>2:51:51 PM</u>		#3 WITNESS HESQUIA RAMIREZ CALLED BY COSBY / SWORN / DEX
<u>2:52:03 PM</u>		JURY BEING SEATED IN BOX
<u>2:53:09 PM</u>	CHANDLER	MR. JOSE RAMIREZ, THE STATE DOES NOT HAVE ANY QUESTIONS

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:54:31 PM		SHE IS ALBERT'S OLDER SISTER
2:54:44 PM		HOW OLD WERE YOU WHEN ELADIO ROBLEDO CAME ABOUT
2:55:20 PM		SHE MOVED OUT AS SOON AS SHE WAS 18 YEARS OLD
2:55:37 PM		YOUR BROTHER LIVED WITH YOUR MOM AND MR. ROBLEDO FOR A NUMBER OF YEARS
2:55:50 PM		WERE YOU EVER AWARE OF ANY ISSUES OF YOUR BROTHER AND MR. ROBLEDO
2:56:52 PM		MY MOM WOULD LET ME KNOW EVERYTHING, BECAUSE I WOULD GO EVERYWHERE WITH MY MOM
2:57:22 PM		DID YOUR BROTHER EVER COME LIVE WITH YOU "YES BACK IN THE BEGINNING OF 2007, HE STAYED WITH ME OFF AND ON ABOUT 3 OR 4 MONTHS"
2:58:04 PM		HE JUST LEFT, HE WAS GOING THRU HIS OWN THINGS,
2:58:23 PM		WERE YOU AWARE OF ANY PHYSICAL ISSUES BETWEEN ALBERT AND ROBLEDO
2:58:54 PM		HE WAS REAL JEALOUS OF MY BROTHER, HE WANTED MY MOM TO HIMSELF, HE WOULD
2:59:23 PM	CHANDLER	OBJECTS RULES OF HEARSAY, VICTIM IS NOT HERE
2:59:56 PM	COSBY	I WAS PRESENT SOMETIMES HOW HE WOULD TREAT HIM
3:00:17 PM		DID YOU EVER SEE ANYTHING BY ALBERT THREATENING, HE WOULD GET UPSET
3:00:53 PM		FAMILIAR WITH BROKEN WINDSHIELD, WAS NOT PRESENT WHEN IT HAPPENED
3:01:37 PM		HE WAS ON CRUTCHES FOR A WHILE,
3:02:24 PM		DID YOU SEE HIM AROUND JULY 2007, HE WAS STILL LIMPING
3:03:01 PM		SHE WAS NOT LIVING IN HOUSE WITH HER MOTHER AND ROBLEDO
3:03:19 PM		DID YOU RECEIVE A PHONE CALL AND TALK TO ALBERT AFTER HIS ARREST,
3:04:17 PM		WERE YOU AWARE OF ISSUES HE WAS HAVING, HE SAID SOMEBODY WAS AFTER HIM
3:04:45 PM	CHANDLER	THIS IS HEARSAY
3:05:10 PM	COSBY	STATUS OF YOUR BROTHER, HE HAS ISSUES
3:05:48 PM	CHANDLER	XEX - YOU SAY THE COPS WERE CALLED AND NOTHING WAS EVER DONE
3:06:24 PM		IF SOMETHING WAS DONE MAYBE IT WOULD NOT HAVE GOT THIS FAR
3:06:40 PM		THERE IS NO JUVENILE JUSTICE HERE

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>3:39:23 PM</u>		ALL YOU SAW WAS SHIRT ON CAR AND SHOES ON GROUND
<u>3:39:55 PM</u>		THIS CAR LOOKED LIKE IT HAD BEEN MOVED, BECAUSE IT WAS FURTHER UP
<u>3:40:30 PM</u>		WHEN DEBRA CAME OUT SHE WAS SITTING ON PORCH STEPS
<u>3:40:53 PM</u>		WITNESS EXCUSED
<u>3:41:33 PM</u>		#2 WITNESS GRACE FINKEY CALLED BY MORRIS / SWORN / DEX
<u>3:42:37 PM</u>		LIVES IN CLOVIS "HOUSEWIFE" HAS 3 BOY'S
<u>3:43:02 PM</u>		WHAT WERE YOU DOING ON JULY 12TH WORKED AT SUTTON'S BAKERY AND HOME CARE,
<u>3:43:41 PM</u>		WENT TO LUNCH AT JALISCO'S SPENT ABOUT 30 MINUTES
<u>3:44:03 PM</u>		GOT IN HER CAR AND WENT BACK ON 6TH STREET HEADED TOWARDS THORNTON
<u>3:45:09 PM</u>		SOMETHING CAUGHT HER EYE SAW TWO PEOPLE RUNNING,
<u>3:45:46 PM</u>		DESCRIPTION OF OLDER GUY RUNNING THINK HE HAD A HAT ON
<u>3:46:22 PM</u>		YOUNGER MAN RUNNING SLENDER, HE WAS WEARING SHORTS, A POLO SHIRT THINK IT HAD GREEN STRIPES, THE YOUNGER ONE WAS CHASING THE OLDER ONE
<u>3:47:29 PM</u>		THE OLDER GUY HAD FALLEN DOWN AND YOUNGER GUY HAD HIS ARM EXTENDED
<u>3:48:40 PM</u>		SHE THOUGHT SHE HEARD TWO POPS
<u>3:49:00 PM</u>		LAST THING SHE REMEMBERS SEEING, LOOKED BACK AND OLDER ONE WAS ON GROUND
<u>3:50:10 PM</u>		SHE DIALED 911 WHILE ON HER WAY TO THORNTON, SHE WAS CONCERNED
<u>3:50:56 PM</u>		GAVE A STATEMENT TO LAW ENFORCEMENT
<u>3:51:08 PM</u>	COSBY	XEX - DO YOU RECALL BEING INTERVIEWED ON DAY OF EVENT
<u>3:51:44 PM</u>		REMEMBERS DAN AGUILAR TALKING TO HER
<u>3:52:13 PM</u>		TOLD THE OFFICER THAT SHE REMEMBERED 3 SHOTS, YOU WERE ALSO ASKED WHAT THE PERSON LOOKED LIKE
<u>3:53:43 PM</u>		HE HAD A POLO SHIRT WITH GREEN STRIPES HE IS THE ONE WITH THE GUN
<u>3:54:51 PM</u>		THINKS THE SHORTS WERE BLUE JEAN DEMIN TYPE
<u>3:55:24 PM</u>		DID NOT SEE ANY SHOES, SAW THE PERSON WITH ONE ARM OUT STANDING A LITTLE TO THE SIDE
<u>3:56:28 PM</u>		DOES NOT REMEMBER SEEING ANYONE ELSE OUT THERE, SAW THE OLDER FELLOW FALL BACKWARD

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

*Restating
Prosecutorial
misconduct*

Time	Speaker	Note
3:15:21 PM	CHANDLER	IF DFT TAKES STAND AND SAYS IT THEN I CAN CALL WITNESS BACK
3:15:41 PM	COSBY	THAT IS WHY I AM TRYING COURT TO MAKE A RULING OUT OF HIS PRESENCE
3:16:32 PM	COURT	CONCERNED THAT THE QUESTION ITSELF PRESENTS PROBLEMS THAT ARE NOT PERTINENT TO THIS CASE, WITH THESE KIND OF ALLEGATIONS I WILL NOT LET YOU ASK THAT QUESTION
3:17:10 PM	COSBY	OBJECTING
3:17:19 PM	COURT	BELIEVES IT IS AN INAPPROPRIATE QUESTION
3:17:30 PM	RECESS	
3:28:30 PM		COURT IN SESSION JURY, DFT AND ALL PARTIES PRESENT
3:29:33 PM	CHANDLER	RDEX - WITNESS SAM SAIZ, DO YOU RECALL INTERVIEW WITH POLICE DEPT.
3:30:11 PM		DO YOU RECALL SPEAKING TO POLICE OFFICER AT THE SCENE
3:30:24 PM		ARE YOU BEING TRUTHFUL TODAY, WERE YOU TRUTHFUL AT THE TIME OF THE INCIDENT
3:30:57 PM		WHAT DID YOU TELL POLICE OFFICER WHEN YOU RAN TO THE FRONT OF YOUR HOUSE ETC.
3:32:01 PM		DOES NOT RECALL ELADIO SAYING OW
3:32:53 PM		YOU TOLD POLICE OFFICER THAT DAY ABOUT NOT SEEING GUN,
3:33:50 PM		RECALLS TELLING HIS MOM DO NOT GO OUTSIDE "YEAH BUT SHE IS STUBBORN SHE FOLLOWED ME TO MAILBOX"
3:34:16 PM		DEBRA HAD A CELLPHONE, SHE TOLD ME CALL JOE "HER OLDEST SON"
3:34:43 PM		TOLD POLICE HE WAS BLEEDING, COUGHING UP BLOOD, COMING OUT OF NOSE AND MOUTH
3:35:16 PM		TOLD THE POLICE OFFICER I SAW ONE OF HIS RED SHOES, ETC.
3:36:11 PM		POLICE OFFICER SAID HE WAS WEARING A RED SHIRT RED SHOES, YOU SAID I THINK WHITE SHORTS
3:36:45 PM		DO YOU RECALL THAT HE SAID WHAT DID HIS HAIR LOOK LIKE
3:37:07 PM		RECALLS TELLING OFFICER HE'S GOT A LONG NOSE
3:37:16 PM		HOW SURE ARE YOU IT WAS ALBERT, I SAID 100%, I DID NOT SEE NOBODY ELSE
3:38:00 PM		DO YOU HAVE ANY REASON TO LIE OR POINT THE FINGER AT SOMEONE, ARE YOU TELLING ABSOLUTE TRUTH TODAY "YES SIR"
3:38:18 PM	COSBY	RXEX - YOU HAVE NO REASON TO TELL ANYTHING OTHER THAN THE TRUTH, I SAW HIM WEARING A RED SHIRT

NINTH JUDICIAL DISTRICT COURT
CURRY COUNTY NM
FILED IN MY OFFICE

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

2009 JAN 13 PM 3: 33

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

ALBERT RAMIREZ,

[Signature]
CLERK DISTRICT COURT

434

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing certain photographs of the defendant at trial and for cause would state;

1. Counsel for defendant has reviewed the contents of the investigating officer's file.

The file contains several photographs of the defendant which are prejudicial and have no probative value. The photographs could be interpreted to suggest involvement in a gang and that inference is prejudicial to the defendant. The evidence in this case does not suggest any gang involvement and the photographs should be excluded by the court.

2. The photographs should be excluded under Rule 11-401 as they are not relevant. The New Mexico rules of evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". The photographs in question were not used by the witnesses to identify defendant.

RP 253

The photographs do not contain any information that makes the existence of any fact that is of consequence to the determination more or less probable.

3. The photographs should also be excluded under Rule 11-403 in that the photographs are more prejudicial than probative. The photographs (which are attached as defense exhibit A) do not have any probative value in this prosecution. The admission of the photographs is extremely prejudicial to the defendant in that they suggest involvement in a gang or other criminal activity.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any of the above referenced photographs into evidence at trial and further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 

BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.


PUBLIC DEFENDER DEPARTMENT

RP 254

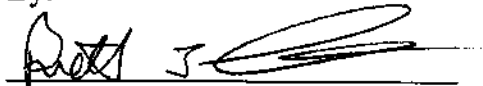
4. There is no doubt that Mr. Robledo's death is due to several wounds inflicted by a firearm.

5. The photographs have no medical value and would only serve to create emotional feelings in the jury that would prejudice them against Mr. Ramirez.

WHEREFORE, defendant Albert Ramirez requests this Court to rule pre-trial that the State cannot offer any photographs of the deceased at trial.

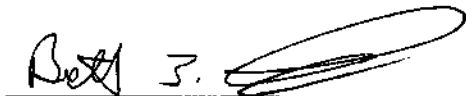
Respectfully submitted,
HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By:



Brett J. Carter
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
Counsel for Defendant

This will certify that a copy of the foregoing was delivered/faxed to the District Attorney's office on January 13th, 2009.



Brett J. Carter
Counsel for Defendant

RP 271

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2009 JAN 14 AM 8:48

STATE OF NEW MEXICO,

Plaintiff,

[Signature]
CLERK OF THE DISTRICT COURT

vs.

No. D-0905-CR-0200700604

434

ALBERT RAMIREZ,

Defendant.

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing a letter the officers allege the defendant wrote and for cause would state;

1. Counsel for defendant has reviewed the contents of the investigating officer's file.

The file contains a letter that contains prejudicial comments (attached as defendant's exhibit b). The letter looks like it is addressed to Albert and there is no evidence such as a handwriting exemplar to prove the defendant wrote the letter. It would be extremely prejudicial to the client to allow this information before the jury especially if defendant didn't write the letter. The letter does not have a date and it is not known when it was written or who wrote it. The letter contains references to "Jack yall" and phrases such as "Ima blast yall niggaz" which a juror would take as extremely offensive. Besides being undated, it appears the letter is addressed to Albert. The letter does not make any mention of the deceased in this case or any references to his or Albert's family.


RP 272

2. The letter should also be excluded since a foundation can not be laid to show that the defendant wrote the letter.
3. The letter should also be excluded under Rule 11-403 in that the comments in the letter are more prejudicial than probative. The letter does not have any probative value in this prosecution. The admission of the letter is extremely prejudicial to the defendant due to the comments made in the letter.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present or mention any of the comments in the letter into evidence at trial and for further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.


PUBLIC DEFENDER DEPARTMENT

RP 273

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2009 JAN 14 PM 2:46

Shirley E. Brown
CLERK OF DISTRICT COURT

**IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY**

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

434

ALBERT RAMIREZ,

Child.

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing the testimony of Dennis Fite at trial and for cause would state;

1. Counsel for defendant has reviewed the contents of the investigating officer's file.

The file contains a report from Agent Mulligan involving an interview of a gun shop owner. Dennis Fite of Crosshairs gun shop told the agent that about three weeks prior to July 13, 2007 that the defendant had been in the store and attempted to purchase a firearm. Due to defendant's age he refused to sell him a firearm and contacted law enforcement. This information is stale, prejudicial and has no probative value. The attempt to purchase a firearm two to three weeks prior to the incident in question is not relevant and is stale. A firearm was not purchased and the statements of Mr. Fite are prejudicial to the defendant.

2. The attempted purchase of a firearm two to three weeks prior to this incident should be excluded under Rule 11-401 as they are not relevant. The New Mexico rules of evidence define "relevant evidence" as "evidence having any tendency to make the

RP 275

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". The testimony of Mr. Fite does not contain any information that makes the existence of any fact that is of consequence to the determination more or less probable.

3. The statements should also be excluded under Rule 11-403 in that the statements are more prejudicial than probative. The admission of the statements would be extremely prejudicial to the defendant in that they suggest involvement in other criminal activities.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any of the above referenced information from Mr. Fite into evidence at trial and further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 

BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.



RP 276

**IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY**

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED BY MY OFFICE

2009 JAN 14 PM 2:46

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

434

ALBERT RAMIREZ,

Defendant.

Signature
CLERK OF DISTRICT COURT

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing into evidence any mention of a restraining order obtained by the victim or defendant's mother and for cause would state;

1. The Clovis Police department and other witnesses have indicated that the victim and/or the defendant's mother had sought to obtain a restraining order preventing the defendant from having contact with them. Agent Mulligan of the District Attorney's office during his investigation of the case contacted the District Court to inquire about the restraining order. The District Court Clerk indicated there were no requests or filings by either the victim or defendant's mother to obtain a restraining order.
2. Any reference to a restraining order should be prohibited by the court until such time as a foundation can be laid to show that a restraining order exists.
3. The admission of a restraining order between the victim, defendant's mother and defendant is extremely prejudicial to the defendant.

RP 279

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to mention or infer that a restraining order existed between the defendant, the victim or defendant's mother and for further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 

BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.


PUBLIC DEFENDER DEPARTMENT

RP 280

STATE v. ALBERT J. RAMIREZ CR 07-434

CR1 CHAMBERS

Time	Speaker	Note
3:39:27 PM	Chandler	Relevance is that it indicates he will commit murder. He expressed thoughts of murder before murder has happened. Note goes to premeditation.
3:40:20 PM	Carter	Note says "Albert" at the top - doesn't know if he wrote the note
3:40:41 PM	Chandler	Weasel is Albert and note was found in the trunk of his car. Randy Pitcock found it in his car.
3:41:16 PM	Carter	Not sure it was written by Albert. More prejudicial than probative. Eye witness testimony is fairly good.
3:41:40 PM	Chandler	Thinks they have good eye witnesses. Trying to take this to first degree murder instead of second degree. Addressing contents of note. Reads note.
3:43:40 PM	Chandler	Review of note. Could make argument to the jury that this is Dft's mind set - he's not afraid to shoot someone if they mess with him. Victim served him with trespass notice - his mindset is that he could kill him.
3:45:42 PM	Carter	Can't tell if the note is written by Albert - found in jeans at a car that was left at his mother's house. Nothing to indicate that the note was written by Albert. More prejudicial than probative. No effort was made to see who wrote it.
3:46:43 PM	Judge	Attempt to purchase a firearm.
3:46:54 PM	Chandler	404b argument - probative vs. prejudicial. Demanded to buy handgun. Manager of gun shop suspected something suspicious - doesn't sell it to him.
3:47:31 PM	Judge	Restraining order
3:47:35 PM	Chandler	Dft. served with restraining order - no trespass order.
3:47:54 PM	Carter	Officers made some mention that restraining order - no restraining order out there.
3:48:35 PM	Chandler	Dft. created two problems before murder - broke out victim's vehicle window and broke out his mom's house window. Filed no trespass order and he comes back and kills him.
3:49:28 PM	Carter	Gun
3:49:37 PM	Chandler	Witness said there was a hand gun with a long barrel. Albert's cousin was found with similar gun that was used in the murder.
3:50:26 PM	Judge	Can make rulings next week.
3:50:38 PM	Carter	Motion about a statement made to Steve Hawkins.
3:50:51 PM	Reeb	Won't do that
3:50:54 PM	Carter	Got a copy of the new autopsy.
3:51:05 PM	Chandler	Was amended because error was caught in the original report.
3:51:44 PM	Carter	Walmart employee testimony reviewed.
3:52:04 PM	Reeb	Lots of witness. Lot of chain of custody witnesses. Still at 30+ witnesses.
3:52:28 PM	Carter	Will interview them next week.

STATE v. ALBERT J. RAMIREZ CR 07-434

CR1 CHAMBERS

Time	Speaker	Note
<u>3:28:15 PM</u>	Judge	Announcement of case. This is a meeting to review some of the Motions that have been filed. Counsel for defendant and state are here. Trial set for January 26 - 5 day trial.
<u>3:29:08 PM</u>	Judge	Knows that State has not had opportunity to respond to Motions. Dft. has gone through referral to restore his competency. After that he is found to be competent. September 16, 2008 - date of Order. Mr. Carter has stated that he was unable or unwilling to assist in defense.
<u>3:30:11 PM</u>	Carter	More of an unwillingness on his part. Is probably getting advice from inmates at the jail. Went to visit him today and tried to get answers from him but were unable. Is not actively cooperating. Has done extensive preparation. Wants to be fully prepared for trial without his assistance.
<u>3:31:28 PM</u>	Judge	Ruled that there will be no interpreter for the family. One Motion refers to photos in file. Testimony of Dr. Burness -
<u>3:32:08 PM</u>	Carter	If there is not presentation of mental health defense, her testimony is not admissible. That's the extent of the motion
<u>3:32:31 PM</u>	Chandler	Don't intend on putting on doctor, unless they raise that issue.
<u>3:32:55 PM</u>	Carter	If they argue to jury on mental health, could put her on.
<u>3:33:20 PM</u>	Chandler	Will probably not call the Las Vegas doctor.
<u>3:33:36 PM</u>	Carter	Researched insanity defense. Would not work in this case based on facts that State has. Temporary insanity - might be closest this he suffers from - but there is no such thing as temporary insanity in this state. Some things that their witnesses will testify might be helpful to defense.
<u>3:34:48 PM</u>	Carter	Some actions that defendant did at detention center prevented them from hiring expert. Don't have an expert. Dft. won't discuss the case so expert can't interview him. No experts at trial.
<u>3:35:44 PM</u>	Judge	Photos of deceased - hasn't seen them.
<u>3:36:07 PM</u>	Chandler	Prior to doctor testifying, will get together and go over pictures that will be introduced.
<u>3:36:37 PM</u>	Judge	If those are limited, will take care
<u>3:36:46 PM</u>	Chandler	Handwritten note - probative vs.
<u>3:37:15 PM</u>	Chandler	Photos of defendant reviewed. Identifies some of his phone calls
<u>3:37:52 PM</u>	Reeb	Not sure of that
<u>3:37:55 PM</u>	Chandler	Identifies himself in the rap song. The back of the picture has the word "weasel". - GARY AFFINATED PREVIOUSLY
<u>3:38:14 PM</u>	Carter	Might need actual photo.
<u>3:38:28 PM</u>	Chandler	Might stipulate that he goes by another name. Note was found in his car. Shows Dft's state of mind at the time of offense.
<u>3:39:09 PM</u>	Judge	Inclination is that unless it is tied in better, doesn't see the relevance.

SEE
IN ADMIS
EVIDENCE

SEE
SUB 711A

SEE

RP 285

ALL PAPERS OR FILES - AND EXHIBITS

Records documents . cases

Relevant to my case

E. F.

INEFFECTIVE ASSISTANCE
ON HABEAS petition .

SEE HER letter saying
we did not fully meet and
she would not communicate
with me at all. I tried
to call every week and she
wouldn't speak to me

HABEAS. counsel did not
argue these ISSUES I bring
now in my Amended
PETITION .

IF she would OF I would
OF GOT AN Evidentiary
Hearing And proved
trial counseling ineffectiveness

HABEAS ATTORNEYS

LICENE. E. KERR.

F. BOTH. AMANDA STEPHANSON

SHE Failed to raise issues
that had merit and would
win.

SHE refused to properly
ASSIST - IN HABEAS AMENDED
PETITION, OR REQUEST FOR EXTENSION
FOR FUTURE INVESTIGATION! Collection of
Materials is requested.

INEFFECTIVE ASSISTANCE OF
BOTH HABEAS ATTORNEYS
ANNANDA STEPHENSON AND
LANCE E. KERR FOR NOT
REQUESTING TRIAL CLOSING
ARGUMENT. I REQUESTED
BOTH HABEAS ATTORNEY FAILED
TO PROVIDE EFFECTIVE
ASSISTANCE IN HABEAS
PROCEEDINGS AND ARGUE
CERTAIN ISSUES. I
WANTED ARGUED.



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 24, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504


RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case. Also, be advised that we have copied your discovery and will be sending it back to you. It will be in 2 parts.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,


Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

ltg

AS/tg

Enclosure(s)

Xc: file

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED IN NEW MEXICO

2019 JAN 19 PM 3:39

ALBERTO RAMIREZ,

Petitioner,

vs.

STATE OF NEW MEXICO,

Respondents.

Shelly B. Brey
No. D-905-CR-2007-00434
CLERK OF DISTRICT COURT

SECOND STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED:

Amanda Stephenson
Amanda Stephenson
Counsel for Petitioner

Drew Tatum
Drew Tatum
DISTRICT JUDGE

Approved via email 1/16/18
Andrea Reeb
District Attorney



LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

DATE: October 5, 2018

TO: Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

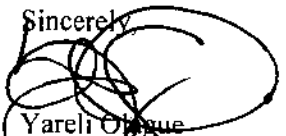
Enclosed please find the following:

State's Response

Please:

- ☐ File and return endorsed copy to this office.
- ☐ Sign and return to this office.
- ☐ Check in the amount of \$ _____ for
- ☐ Per your request.
- ☒ For your information.
- ☐ Please contact the office to schedule an appointment.
- ☐ Pay vendor directly.
- ☐ Other:

Sincerely,


Yareli Ojeda
Legal Assistant to
LIANE E. KERR LLC



Law Offices of The Public Defender

Bennett J. Baur
Chief Public Defender

February 23, 2018

Albert Jose Ramirez
DOC #69597
Southern New Mexico Correctional Facility
PO Box 639
Las Cruces, NM 88004

Re: ALBERT RAMIREZ vs. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez:

This office has recently opened a file on your habeas case, and I have determined that your case should be assigned to a contract attorney outside of this Department. If you have any questions about this issue, you may contact me to discuss it at 505-369-3611.

Your new attorney on this habeas matter is: Liane Kerr, PO Box 10491, Albuquerque, NM 87184; phone # (505) 848-9190. Please contact this lawyer regarding further proceedings in the case.

Sincerely,

Brian Tucker

Supervising Attorney/Post-Conviction Habeas Unit

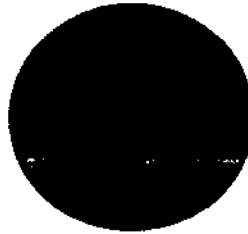
xc: File

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden



Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: **Alberto Ramirez #69597**
5B-F107

FROM: **Bayola Luna**
5B Classification Officer

DATE: **3/9/18**

RE: **Attorney Call**

I have scheduled an attorney phone call for you with Attorney Tucker for Wednesday, April 25, 2018 @ 10:30 am. Please ensure you are in my office 5 minutes prior to the scheduled time.



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 19, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Pro Se Petition for Writ of Habeas Corpus that you submitted to the district court.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,

Amanda Stephenson
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

tg

AS/tg

Enclosure(s)

Xc: file



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 24, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

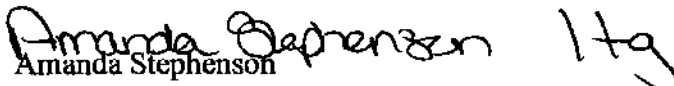
RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case. Also, be advised that we have copied your discovery and will be sending it back to you. It will be in 2 parts.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,


Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

Xc: file



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 30, 2018

Alberto Ramirez
DOC #69597
Central New Mexico Correctional Facility
PO Drawer 1328
Los Lunas, NM 87031

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the documents our office received from the court. These are all the documents we were able to obtain from your criminal case.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,

Amanda Stephenson 1tg
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

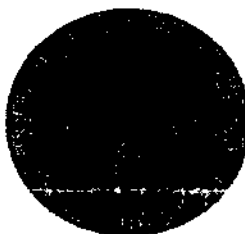
Xc: file

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden



Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: Alberto Ramirez #69597
5B-F107

FROM: Bayola Luna
5B Classification Officer

DATE: 6/19/18

RE: Attorney Call

The below attorney calls have been scheduled for you. Please ensure you are in my office 5 minutes prior to the call.

Attorney Kerr or Yeralie – Thursday, June 21, 2018 @ 12:30 pm
Attorney Tucker – Monday, June 25, 2018 @ 2:00 pm

Fondacat
1800-984-2724



Law Offices of The Public Defender

Bennett J. Baur
Chief Public Defender

August 14, 2017

Albert Ramirez
DOC #69597
PNM
PO BOX 1059
SANTA FE, NM 87504

Re: ALBERT RAMIREZ vs. State of New Mexico
Criminal Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez:

The district court has appointed the Public Defender Department Post-Conviction Habeas Unit to represent you on your petition for a writ of habeas corpus. Your case has been assigned to me, and I am pleased to represent you on your petition.

At your earliest convenience please arrange an attorney-client phone call through your caseworker. Prior to our call, your caseworker should contact my legal assistant, Tanya, to arrange to schedule the attorney-client call. This will insure that I am in my office, have your file ready and am available to take your call. Our office will accept the charges for the call, if necessary.

Because of the number of inmates that I represent, we cannot make a written response to most letters. You can always write to me if there is an emergency or you do not have access to a scheduled attorney-client call through your caseworker.

However, if you have any important facts or legal ideas you want me to review, please either bring them up during our phone call or put them in writing.

My direct number is (505)369-3612, and my legal assistant, Tanya's direct number is (505)369-3613. Please keep me posted about your location and please send me any changes of your address.

Sincerely,

Amanda Stephenson

NM Public Defender Department/Post-Conviction Habeas Unit

xc: File

505 Marquette Avenue NW, Suite 120, Albuquerque, NM 87102 (505) 369-3600, FAX (505) 796-4595

Rec'd: THIS

*PLEASE
RETURN
THIS TO
ALBERT
RAMIREZ
THANK
YOU
JENNIFER
BEANAL
CASEWORKER*

[illegible]

Aminda, I appreciate
your help. Thank you.
C. B. Bledsoe

you
SENT - A amended
petition to the court
PLEASE CONTACT
the district tell them
you will help me
do Amend petition
~~I've been cheated all~~
I should be

~~I've been checking
 done wrong, I should be out
 double jeopardy - ALSO, HOW CAN WE
 WIN MY HABEAS, BUT FILE FOR
 double jeopardy?
 I've been persuaded by counsel I
 WANTED COSBY. BUT IN HABEAS
 SAID NO. Because I don't know
 HOW TO WIN ON OTHER ISSUES, I WILL
 abandon ineffective assistance IF able
 to win on other issues, file Double
 jeopardy motion do you?
 know what I MEAN.
 intention of my due
 process, then double
 jeopardy.
 K.~~

1081 of 1863



LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

DATE: October 5, 2018

TO: Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

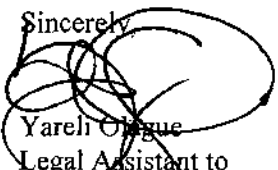
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- ☒ For your information.
- ☐ Please contact the office to schedule an appointment.
- ☐ Pay vendor directly.
- ☐ Other:

Sincerely,


Yareli Olegue
Legal Assistant to
LIANE E. KERR LLC

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2009 JAN 12 PM 3:23

STATE OF NEW MEXICO,

Plaintiff,

[Signature]
CLERK OF DISTRICT COURT

v.

ALBERT JOSE RAMIREZ,

No. D-0905-CR-0200700434

DOB: [REDACTED] 88
SOC: [REDACTED] 793
STN: 050100070340

Defendant.

ADDITIONAL WITNESS LIST

The prosecution notifies the opposing party that the following potential witnesses may be called to testify at trial:

1. Officer Jonathan Howard, Clovis Police Department, Clovis, New Mexico;
2. Officer Tim Orum, Clovis Police Department, Clovis, New Mexico.

Andrea R. Reeb for

ANDREA R. REEB
CHIEF DEPUTY DISTRICT ATTORNEY

I hereby certify that a copy of the
foregoing instrument was mailed/
delivered to opposing counsel on the
12th day of January, 2009.

[Signature]

D.A. No. 07-471
MEC/jrg

Criminal Form 9-417

RP 251

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

2009 JAN 13 PM 2: 15

STATE OF NEW MEXICO,

Plaintiff,

v.

ALBERT RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

ADDITIONAL
STATE'S WITNESS LIST

COMES NOW the State of New Mexico by and through its attorney, and discloses that the following is an additional witness which the Office of the District Attorney intends to call for trial in this cause:

1. Joshua Parkin, Clovis Police Department, 300 Connelly, Clovis, NM 88101.



Matthew Chandler
District Attorney

I hereby certify that I have mailed/
delivered a copy of the foregoing to
opposing counsel this 13th day of
January, 2009.



DA 07-471
MEC/jrg

RP 252

AFFIDAVIT I asked Liane E. KUI
Habeas Attorney TO FILE
ISSUES correctly She did not.

I CONTACTED AMANDA STEPHENSON
SEVERAL TIMES LET HER KNOW THE
DEADLINE WOULD BE SOON TO FILE THE
AMELOR HABEAS PETITION EACH TIME
SHE WOULD SAY SHE WOULD FILE IT AND
REQUESTED THE TRANSCRIPT FROM THE
COURT CLOSING AND OPENING ARGUMENTS
REBUTAL AND OF SPECIFIC WITNESSES
SAM SAIZ, DENNIS FITE, OFFICER HOWARD,
TONY BARRAZ, SANDY LOOMIS, CLARE LICE
BUT NEVER GOT THE TRANSCRIPT OR
DISCOVERY OF MY MENTAL HEALTH
RECORDS FROM PRISON NM DEPT CORR.
TO SHOW I WAS SUFFERING FROM
SCHIZOPHRENIA + PTSD + DEPRESSION
AT TIME OF TRIAL + POSSIBLY TIME
OF CRIME I WAS INSANE OR
INCAPACITATED AND NOT COMPETENT
I WAS DECEIVED BY AMANDA
STEPHENSON POST CONVICTION HABEAS
ATTORNEY SHE DID NOTHING FILED
NOTHING ONLY LIED CONTINUOUSLY →
TO ME. NO LOYALTY.
AND THIS CAUSED ME NOT
TO BE ABLE TO PROPERLY

5/9/18

consult with my new private
ATTORNEY Liam Rice and
also appellate counsel was
ineffective for not claiming
insufficient evidence to convict
and double jeopardy on the
two counts of tampering w/
evidence and I told him
to check closing arguments
this was prosecutorial
misconduct. By calling me
a menace to society, liar,
manipulator, cold blooded killer no
evidence to support this and
asking witness Sam Saiz in
direct exam if you telling the
truth and at the time of incident?
There is no reason for you to lie?
Vouch for witness. Boosting credibility
and of exhibit 110 letter stating
of shooting people, jacking sealay
drugs killing, was admitted read
to jury then excluded, but used
in closing argument ➡

Showing pictures of deceased gruesome
Setback of objection
ASK FOR HEARING OF some change too
5/9/18

And Appellate counsel failed to argue
There was conflict of interest
between myself and trial counsel
I wanted dr Maxine Swartz called
as a witness to my sanity & competency,
mental illness, and in a way
Lie and Truthful my credibility
character witness.

All this was ineffective
assistance of counsel.

TRIAL counsel failed to question
all jury members After I fell
down and they saw my leg
shakes. Failed to request a
mistrial and failed to object
in closing argument & rebuttal
And examination of my witnesses
I was prejudiced and
deprived my right to effective
assistance of counsel

I was denied my due process
rights and a fair trial

5/9/20

5th and 14th admendment And
6th admendment And violation
of Federal law And Federal Rights
and Federal and United States
laws And constitution.

Between Jan. 15th and Feb 29th 2018
I had no pens And paper to write
And not able to speak to
my Habeas attorney Jane Rick
I spoke to HER 10 minutes in
about 2½ months, we had
About no time proper to file

5/9/2018

petition, research, go over voluminous
transcript, records, discovery to
Fully claim All of our claims raised.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
INEFFECTIVE ASSISTANCE OF APPEAL
COUNSEL

IMPROPER COMMENT ON SILENCE

IMPROPER PRIOR BAD ACTS EVIDENCE

TAMPERING W/ EVIDENCE double jeopardy
PROSECUTORIAL MISCONDUCT
CROSS EXAMINATION, direct examination,
CLOSING ARGUMENT,
INCOMPETENCY to STAND TRIAL
REVELATION OF COMPETENCY
INSUFFICIENT EVIDENCE TO CONVICT
COURT IMPROPER EXCLUSION OF
SEX ABUSE.

JURY SAW ME SHAKED IN COURT
AND FALL DOWN.

CHALLENGE GOV'T - JURY INDICTMENT

5/9/2018

TRIAL counsel Failed to ask for
motion for change of venue even
though extensive news media
as alleged attacked victim on previous
accusations.

Failed for motion retrial discovery
of give me all discovery

Failed to suppress evidence,

Exhibits, 110, 357 Bullets, Cellphones, etc.
Failed to get all psych exams.

~~State~~ district court abused discretion
improperly denied motion for
extension to file amended petition
to meet with + discuss issues
review, transcript, conduct research
and discovery violations, and dishonesty
discoption by Amanda Stephenson
I told her to file it in Dec 2017
she said she would and did
nothing. no research, no request
for transcripts, no discovery
requests, only extensions to
do nothing.

5/9/2018

NEWSPAPERS. Stated I threatened
victim and my mom to kill them
Both. prejudicial.

NO WARRANT FOR SEARCH OF
Cellular and Room padlocked.

NO OBJECTION TO HEARSAY
OF DEFENDANTS WITNESS. HOSCOVA RAMER
and Lupe Cassillas. Incomprehensible

I am not and was not able
to properly file my petition
for Habeas Relief. Because I
did not have discovery, or
transcript closing + opening argument
prosecutorial misconduct. also
in questioning witnesses.

Not able to factual + bring claims
with all I needed to show
by not allowing 60 day extension
to meet with lawyer.
I love Nell.

Sincerely Cassy

Albert Ramirez

P.O. Box 639

Las Cruces NM

88004

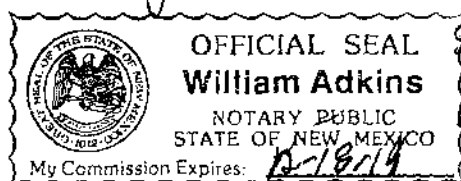
← turn page

5/4/18

THIS AFFIDAVIT IS TO SHOW I did NOT have enough time to consult with LICIA ICEP HABEAS ATORNEU APT. 2/28/2018 / I AM going to do my BEST I ASK THE DISTRICT COURT AND FEDERAL COURT to NOT deny my petition or DISMISS it because I did NOT say WHAT WITNESSES would say at an Evidentiary HEARING, OR WHAT EVIDENCE I'd SHOW TO PROVE IM WRONGFULLY CONVICTED IF I'd OF got a 60 day Extension this would OF been possible. THERE will be a MISCARriage of Justice by NOT allowing me 60 day extension and to give me AN Evidentiary HEARING And properly able to present my ISSUES TEVIDENCE DOCUMENTS, WITNESSES And a discovery And trial transcript.

State of New Mexico
County of Dona Ana

Thank you very much
Albert Ramirez



Signed and sworn before me
on May 10, 2018 by Alberto Ramirez
Notary: William Adkins
My Commission Expires 12-18-19

5/9/18

I was in an accident ^{April} 2007. left me unable
to walk work or drive. Hallucinations, delusional,
paranoid, severely depressed. taking
several medications.

There would be a miscarriage of
Justice to not allow me an 60
day extension to properly talk with
my Habeas lawyer and raise issues
in Fed. district court. + I need
trial transcript, discovery to research.

I'm being done wrong by Amanda Stephenson
and the court. I needed more time.
I believe wrongly denied.

Thank you very much
God Bless you

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez:

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.


Because of the late receipt of discovery, I requested a 60 day extension (since Ms. Stephenson requested two separate 90 day extensions but filed nothing, I didn't want to push things and ask for a full 90 days). Unfortunately, the State would not agree to my request. The judge gave us only 30 days, making our new Petition due May 19, 2018.

I have been working furiously to pull the Petition together so we will not miss the deadline. I sent the audio CDs to a transcriptionist to transcribe only those portions of the trial which support the habeas argument. I made reference to the transcripts by citing to the CD and counter number. Once I have the transcripts, I will replace the CD counter number with the actual transcripts as exhibits on receipt of same. Because I am still pulling together the exhibits, I have not labeled them yet. Regardless, I am providing you the Petition, together with the exhibits I do have.

Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you.

Sincerely,


LIANE E. KERR

w/Petition

Denial
effective of
assistance of
Habeas Petition
ASSISTANCE

↓

DID NOT
MEET TO
PRESENT MY
ISSUES
PROPERLY

- I.E.A. OF COUNSEL WAS INSUFFICIENT FOR RECORD NO EXPANSION OF RECORD OR AN EVIDENTIARY HEARING.
 - NO REQUEST BY HABEAS LAWYER FOR TRANSCRIPT OF CLOSING ARGUMENT TRANSCRIBED.
 - TRANSCRIPT WAS ESSENTIAL TO CLOSING ARGUMENT TO REVIEW TRIAL COUNSEL PERFORMANCE AT TRIAL.
 - CONSTITUTIONAL ERROR. WOULD OF BEEN FOUND NOT GUILTY.
 - AMEND. RESUBMITTING.
 - FUNDAMENTAL MISCONDUCT OF JUSTICE WOULD RESULT FROM FAILURE TO HOLD A EVIDENTIARY HEARING.
 - DEMONSTRATING A NEED FOR AN EVIDENTIARY HEARING
 - THE COURT MUST HOLD A HEARING FOR THE PRISONER TO OFFER EVIDENCE
- U.S. V. HURTADO ; 516 U.S. 611,
28 L. Ed 231
- NO APPEARANCE OF PRISONER NEEDED.

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

May 14, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

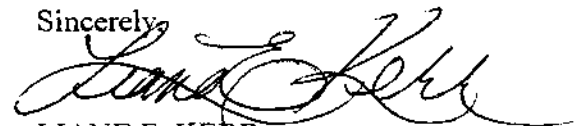
Dear Mr. Ramirez:

Having met with you recently, I can confirm what others have iterated about your ability to work meaningfully on your case. I do not appreciate you assuming that my meeting with you was to rehash arguments which have already been advanced by others and which I did address in the habeas petition. In addition, I asked you numerous times to please provide me with your input on this petition and yet you were silent, preferring instead to accuse others of stealing your discovery and trying to undermine you. I might mention that when we met, you had in your possession, copious amounts of discovery----certainly more than I pulled together for your case and I can only assume that you have multiple copies of everything since you have made the same complaint to anyone who dared assume the task of representing you.

Although I do not think that adding issues which are not supported by the record are helpful to the habeas process, as requested I added the requested issues. I will not add your "affidavit" as it is merely argument. As I have repeated to you on multiple occasions: either I write the habeas petition and present it to the court or you do. You are not my co-counsel. I previously provided the petition and am providing the last two pages which changed due to the additional issues for which you requested "just a paragraph". Those paragraphs are added and included with this letter.

I also include the actual exhibits which are attached to the habeas petition.

Sincerely,



LIANE E. KERR

w/added pages to Petition; exhibits

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER
RULE 5-802 NMRA**

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, and the Court being fully advised of the circumstances;

THE COURT FINDS THAT:

☒ The petitioner is incarcerated.

IT IS THEREFORE ORDERED THAT:

☒ The Law Office of the Public Defender is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

☒ Petitioner's counsel shall file an amended petition or file a notice of non-intent to file an amended petition within ninety (90) days of the date of the filing of this order.


DREW D. TATUM
District Judge, Division II

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 JUL 27 PM 2:17


CLERK DISTRICT COURT

*why does it
say filed
July 27th 2017
if I sent
petition.
check.
filed
July 27th 2017*

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez:

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.


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Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you.

Sincerely,


LIANE E. KERR.

w/Petition

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2017

8/11/2017 10:57:06 AM

Office of the Clerk

Joey D. Moya

NO. S-1-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v.

GERMAN FRANCO, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By Madeline Garcia
Chief Deputy Clerk

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER

THIS MATTER having come before the Court on the Petitioner's
Habeas Corpus filed March 22, 2017 and Petitioner's
filed April 25, 2017 (hereinafter collectively referred to as the
cause number, and the Court being fully advised by the

This Court notes that the Petition is based on the fact that
Petitioner is challenging his conviction based on the lack of
assistance of counsel.

A review of the file shows that the Petitioner was convicted of
including Murder in the First Degree in October 1981 by the
New Mexico Supreme Court. The New Mexico Supreme Court
This case was subsequently assigned to this Court.

As to Petitioner's argument that there is no
properly supported by facts in the Petition.
relief as a matter of law in this regard.

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12:21


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

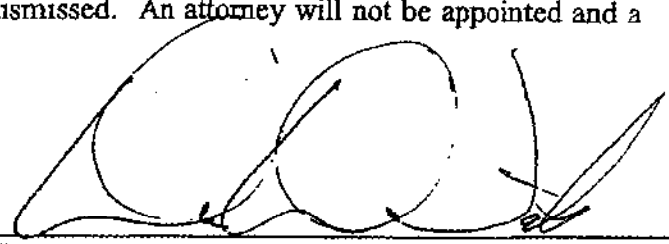
A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.



HON. DREW D. TATUM
District Judge, Division II

January 12, 2017

got note
of
appeal
of
attorney

To: Alberto Ramirez #69,597

From: Steven J. Forsberg, Assistant Public Defender

Re: Status of your appeal

Dear Mr. Ramirez,

As we discussed on the telephone, the New Mexico Supreme Court has ruled against you on your appeal. Your direct appeal is now over. You can file a writ of habeas corpus, and I recall you said you had the package of paperwork. I cannot represent you on your habeas case, but when you file your request I advise that you ask that an attorney be appointed for you.

You mentioned that a lot of your papers were lost, so I am sending you copies of the brief-in-chief, state's answer, and reply brief in your case.

As I said, I cannot write your habeas petition for you, but I'd suggest you consider adding this to it: In your Brief-in-Chief on page 17 it states that you had asked Doctor Schwartz to be called as a witness on your behalf, but she was not. This is evidence that there were witnesses you wanted called that were not.

You have my name and number if you have any further questions regarding your direct appeal.

Steven J. Forsberg, Assistant Public Defender

505 Marquette Ave. NW ste 120

Albuquerque, NM 87102

Phone: (505)796-4405

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

May 14, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

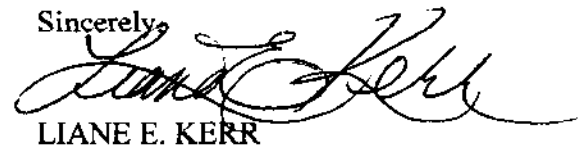
Dear Mr. Ramirez:

Having met with you recently, I can confirm what others have iterated about your ability to work meaningfully on your case. I do not appreciate you assuming that my meeting with you was to rehash arguments which have already been advanced by others and which I did address in the habeas petition. In addition, I asked you numerous times to please provide me with your input on this petition and yet you were silent, preferring instead to accuse others of stealing your discovery and trying to undermine you. I might mention that when we met, you had in your possession, copious amounts of discovery----certainly more than I pulled together for your case and I can only assume that you have multiple copies of everything since you have made the same complaint to anyone who dared assume the task of representing you.

Although I do not think that adding issues which are not supported by the record are helpful to the habeas process, as requested I added the requested issues. I will not add your "affidavit" as it is merely argument. As I have repeated to you on multiple occasions: either I write the habeas petition and present it to the court or you do. You are not my co-counsel. I previously provided the petition and am providing the last two pages which changed due to the additional issues for which you requested "just a paragraph". Those paragraphs are added and included with this letter.

I also include the actual exhibits which are attached to the habeas petition.

Sincerely,



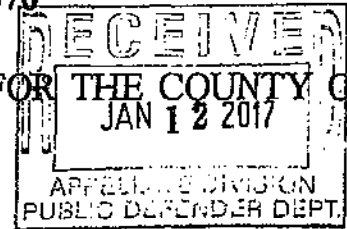
LIANE E. KERR

w/added pages to Petition; exhibits

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was defendant, the district court entered judgment convicting defendant of willful and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this Court upon notice of appeal and statement of issues filed by defendant, whereupon such proceedings were had that on December 1, 2016, a decision was issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court of the State of New Mexico

I did not know of this till Dec 2016

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

Office of the Clerk
Byron White United States Courthouse
Denver Colorado 80257

Elisabeth A. Shumaker
Clerk of Court

Chris Wolpert
Chief Deputy Clerk

May 7, 2019

Alberto Ramirez
No. 69597
Lea County Correctional Facility
6900 West Millen Dr.
Hobbs NM 88244

Dear Mr. Ramirez

The court has received your letter asking for forms from this court. Your case is still pending in the district court. After the district court rules, and if you file an appeal, you will receive instructions and forms from the court at that time.

Very truly yours,



ELISABETH A. SHUMAKER, Clerk

/err


Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
February 05, 2019

NO. S-1-SC-37501

ALBERT RAMIREZ,

Petitioner,

v.

JOHN GAY, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, and Justice Michael E. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of February, 2019.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia

Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2017

Supreme Court of New Mexico
8/11/2017 10:57:06 AM
Office of the Clerk
Joey D. Moya

NO. S-1-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v.

GERMAN FRANCO, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties or their counsel of record on date filed.

Madeline Garcia

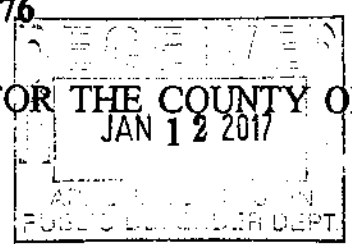
Clerk of the Supreme Court
of the State of New Mexico

By Madeline Garcia
Chief Deputy Clerk

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **MANDATE NO. S-1-SC-34576**

3 **TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF**
4 **CURRY, GREETINGS:**



5 WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal
6 docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was
7 defendant, the district court entered judgment convicting defendant of willful
8 and deliberate first-degree murder and tampering with evidence; and

9 WHEREAS, the cause and judgment were afterwards brought into this
10 Court upon notice of appeal and statement of issues filed by defendant,
11 whereupon such proceedings were had that on December 1, 2016, a decision was
12 issued affirming defendant's conviction.

13 NOW, THEREFORE, this cause is remanded for further proceedings, if
14 any, consistent and in conformity with the judgment of this Court.

15 **IT IS SO ORDERED.**

16
17
18
19 (SEAL)

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico


Joey D. Moya**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO****February 05, 2019****NO. S-1-SC-37501****ALBERT RAMIREZ,**

Petitioner,

v.

JOHN GAY, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, and Justice Michael E. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of February, 2019.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia
Chief Deputy Clerk

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
FILED BY MY-011046

2017 OCT 23 AM 9:53

ALBERTO RAMIREZ,

Julia Dwyer
CLERK DISTRICT COURT

Petitioner,

No. D-905-CR-2007-00434

vs.

STATE OF NEW MEXICO,

Respondents.

STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

[Signature]
Drew Tatum
DISTRICT JUDGE

APPROVED

[Signature]
Amanda Stephenson
Counsel for Petitioner

Approved via email 10/17/17
Andrea Reeb
District Attorney

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED IN MARCH

2019 JUN 19 PM 3:39

ALBERTO RAMIREZ,

Petitioner,

vs.

STATE OF NEW MEXICO,

Respondents.

Shelly B. [Signature]
No. D-905-CR-2007-00434
Clerk of Court

SECOND STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED:

[Signature]
Amanda Stephenson
Counsel for Petitioner

[Signature]
Drew Tatum
DISTRICT JUDGE

Approved via email 1/16/18
Andrea Reeb
District Attorney

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligibility AFTER 30 yrs plus two 3 yrs
two tampering with evidence.

1st degree murder
2 tamper w/
evidence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE. P. COSBY

P.O. Box 3330

14. Did you appeal your conviction?

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court.

New Mexico Supreme Court of Appeals.

(b) The case name and docket number for each appeal:

(Don't know how to do this.)

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed Sometime Around August 2013.

Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

Competency Reevaluation, Ineffective assistance
of counsel, improper comments on silence, prosecutor
misconduct, prior bad acts. Specifier

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG

505. Marquette N.W 87102

505. 796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding: petition Habeas, denied, BUT I've put in a motion to RECONSIDER, AMEND, REVISED petition.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

petition Habeas, But this one is to
Resubmit it to try to do it properly

(b) The name and date of each case:

PM Judicial District Court, State of N.Mex. v. Abert
Ramirez

(c) the docket number:

NOD-~~090~~ 0905-CR-2007-00434

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

NA

(e) the result of each proceeding. (Attach a copy of each decision.)

denied,

(f) The issues raised in each proceeding:

ineffective assistance of counsel,

(g) State whether a hearing was held in connection with each of these proceedings:

no

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

NO

19. Do you seek the appointment of counsel to represent you?

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, ____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

Am Judge
T. J. S. 101
C. 1015
Court (name of court)
____ (city), New Mexico, ____ (zip code).

(
Signature

AIBERT JOSE RAMIREZ

(
Address

P.O. BOX. 1059 SANTA FE 87501

PNM No., if applicable

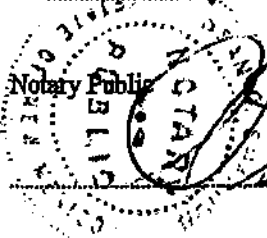
NOTARIZED PLEASE
5/27/2019

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

SUBSCRIBED AND SWORN TO before me this 12 day of JUNE, 2019 by

(Name of petitioner)

AIBERTO RAVIEREZ

Notary Public


My Commission Expires:

4/23/2019

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by M.A.I. (describe manner of service), this 13 day of JUNE, 2019

(
Signature of petitioner AIBERTO RAVIEREZ
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

1

After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2

Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through July 1, 2015.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

End of Document

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THE WAY TO USE THE
EXHIBITS WITH THE ISSUES

I claim + present.

Just GO TO page and

OR Exhibit or Both.

I am NOT A lawyer,

I had NO more paper
to make it nice + NEAT.

I had to send it out
ASAP. + COPIES + ALL.

IM BEING IGNORED by
law library IN PRISON.

PLEASE. EXCUSE MY

MISTAKES. I TRIED
MY BEST.

FACTS + transcribe
 directly, to prove claim of
 INEFFECTIVENESS OF COUNSEL

See EXHIBIT 4, 5

MR. COSBY COUNSEL TRIAL DENIED
 AND FAILED TO PROVIDE EFFECTIVE
 ASSISTANCE.

A WEEK BEFORE TRIAL
 I ASK TO FIRE MY ATTORNEY
 DURING TRIAL IN COURT I
 FIRED MY ATTORNEY. EACH TIME
 THERE NO INQUIRE INTO WHY
 I WAS EXPRESSING DISSATISFACTION
 I WAS TOLD TWICE BY MR
 COSBY BEFORE TRIAL STARTED
 AND AFTER I TRIED TO FIRE
 HIM IN COURT DURING TRIAL
 COSBY STATED - I AM A LITTLE
 STUPID BITCH AND MADE
 THREATS, BY SAYING I HOPE
 YOU GET LIFE, I ALREADY TOLD
 YOU TO TAKE THE PLEA OR YOU
 WON'T BE PROVIDED EFFECTIVE
 ASSISTANCE OF COUNSEL.

I WAS NOT ABLE TO PUT THE
 ALLEGATIONS ON RECORD.

BUT SEE EXHIBIT'S (10) page 1, 2, 34, 5
 (10) page 38-47

See EXHIBIT
page 47 page 13, 54, 55, 56
EXHIBIT 13

page 2

I TRIED to address court my lawyer was NOT Filing ANY OF my motions I ASKED him to. CHANGE OF VENUE, EVEN though there WAS PRE-TRIAL publicity concerning the case in small community of CUBS, NEW MEXICO. SOME OF this publicity inaccurately described MR RUIZ as having attacked alleged victim on prior occasions, THE publicity WAS IN accurate and highly prejudicial and defense counsel should have at least raised the issue and requested a HEARING. SEE EXHIBIT 13

Counsel should have at least Filed a motion to suppress evidence that WAS illegally seized & inadmissible and highly prejudicial SEE EXHIBIT 11, 48, 49, 50 or requested a HEARING ON this issue

Counsel did NOT provide me with all discovery, would NOT discuss WHO He was planning to call as witnesses And would NOT discuss intent to present the defense OF INSANITY Counsel did NOT file a Notice OF INTENT to present the defense EXHIBIT 1) page - 1, 2, 3, 4, 5

See page 3, 4

page 3

page 4, 10, 12, 13
Exhibit 1, 3, 10 page 47

Insanity, But Instead of advocating zealously on BEHALF OF MR. RAMIREZ'S DEFENSE, COUNSEL INFORMED THE COURT THAT HE WOULD NOT BE PRESENTING EXPERT PSYCHIATRIST, OR PHYSICIAN, BECAUSE MR. RAMIREZ WOULD DISCUSS THE CASE WITH HIM AND IS UNABLE TO ASSIST IN THE DEFENSE.

COUNSEL FAILED TO ALERT THE COURT TO IMPORTANT FACTS IN ARGUING THE CASE. MR. RAMIREZ WAS INJURED IN AN ACCIDENT IN 2007 WHICH HE BEGAN TAKING ANTI-DEPRESSANT MEDICATION, & OTHER MEDICATIONS. THIS BECAME SEVERE DEPRESSION AS HE WAS UNABLE TO WALK, WORK, OR DRIVE, COULD ONLY WALK WITH CRUTCHES, SUFFERED FROM PSYCHOSOMATIC DELUSIONS, HALLUCINATIONS, ~~THE~~ COUNSEL DID NOT PRESENT EVIDENCE OF THE MEDICATION MR. RAMIREZ WAS TAKING.

MR. RAMIREZ FELT HIS LAWYER WAS AGAINST HIM, SEE page 4, 10, 12, 13
Exhibit 1, 3, ~~THE~~

SEE EXHIBIT 1, PAGE 10, PAGE 4

COUNSEL Failed to File any
WITNESS list WHATSOEVER IN
SUPPORT OF MR. RUIZ'S DEFENSE
OF INSANITY and lack of capacity

MR. RUIZ had several witnesses
He wished to present in support of
his defense, including his Aunt,
Sister, Brothers, Friends, and
doctors who treated him after
accident.

COUNSEL failed to show courts JENNIFER said next
MR. RUIZ asserts that he ^{I was to cooperative} ^{de. Bress lied said I}
received ineffective assistance of ^{would not} ^{cooperate}
COUNSEL for various reasons that
are, unfortunately, not on
record, because those matters
were not preserved in the record.

MR. RUIZ Request ~~that~~ that the
court grant him an attorney to
assist him in habeas proceedings
and to hold an evidentiary
HEARING. ON INEFFECTIVE OF
COUNSEL.

Exhibit 1. 2:12 05
PM

↓ 10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
COUNSEL VERBALLY ASSAULTED ME I
ADVISED COUNSEL. I DID FALL DOWN
IN FRONT OF JURY BECAUSE OF
THE SHACKLES ON MY LEG TIED TO
THE TABLE, WHEN I WAS TOLD TO
RISE, SHERIFF CALLED ME TO DOOR
I FELL, JURY SAW MY SHACKLES,
WHILE MY LAWYER WENT TO TALK TO THE
JUDGE THE JUDGE, THE SHERIFF
DOUBTLY THREATENED ME AND TOLD
ME TO SAY I DID NOT FALL.
I WAS ASKED BY JUDGE DID YOU
FALL. I SAID YES THEN NO
BECAUSE SHERIFF WAS GESTURING
ME TO SAY NO. ONLY D.A.
WOULD SEE. SHE WAS SHAKING
HEAD & FINGER AND MOVING NO.
I TOLD MY LAWYER THIS AND
ASK HIM WHY DONT HE SAY
IT TO THE COURT.
HE SAID NO I ALREADY MADE
UP MY MIND.

page 6

Exhibit 1 page 1-S

Counsel Failed to Alert the court that
 Todd him I did fall, Judy saw
 my shingles, Sheriff doctery
 manipulated me to say NO.
 (TO GO AGAINST MYSELF) ASK doctery CHAMBER
 COUNSEL Failed to call, DR FINK,
 DR. BURNISS, DR. MAXINE SWARTS
 WHO I advised I had been
 SEXUALLY ABUSED MY MOMS
 big friend, + neighbor SAM SAIZ
 SEE EX.B. + 24, S pages 4, 7, 8, 12, 13
 17, 18-27

COUNSEL Failed to call witness, Priscilla
 Lopez, Ricky Terrillo, to help prove
 I was the one being chased in
 yard, to help prove my testimony
 truthful,

SEE EX.BIT 7, 8, 10

COUNSEL Failed to investigate family
 history of mental illness, and
 family witnesses to abuse of
 INSANITY, 4.5.

I would try to call him and
 write to talk he ignored me or was
 too busy, to see EX.BIT. 4, 5, 7,
 page 13 to 24 + 27 + 30 + 47

SEE

SEE PAGE 7

EXH. + 2

EXH. 4.5 page 17
EXH. 4.5 page 19
EXH. 4.5 page 25

COUNSEL Failed to Keep Promises
Made, of being able to testify
about Sexual Abuse and that he
would file motions I asked him
to file

page 47

SEE EXHIBIT 4, 5, 10

1, 1A

COUNSEL Failed to call my father & brother
who would testify Eladio Fabela
was violent and had assaulted me
and them in past.

My father and brother are willing
to testify to this at hearing.

COUNSEL Failed to call Dr Maxine
Swartz as witness who would
testify as to my insanity defense
and sexual abuse and incompetency

SEE EXHIBIT 9.10
Page 39 to 43 + 47

COUNSEL Failed to present my
defense at trial.

~~COUNSEL Failed to give me advice when~~

COUNSEL Failed to give me advice when
I asked once I was drunk when I killed
my step dad. do I tell that or not. He did not
1/21/22

page 8

COUNSEL Failed to GET MEDICAL
RECORDS to SHOW I WAS
ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of
the plea did not explain the
maximum & minimum time
I was facing even though I
tried to ask. (SEE PAGE 4) 5, 6

COUNSEL Failed to Be respectful
and responsible and fail fill his
duty of loyalty and advocate
to me his client.

COUNSEL Failed to Argue I was
the one being chased by Robledo
that I was 100 pounds and Robledo
175 pounds, not 145 as medical
EXAMINER said. page - 7-10

SEE EXHIBITS 2,

COUNSEL Failed to Alert court
I was hearing voices during trial.
SEE EXHIBIT, 1, 1A, 4, 5, 6

page 1 through 5

page 11

Exhibit 1.

Counsel Failed to communicate
Back with Mr. Ramirez, even
though Mr. Ramirez tried
to no avail.

Mr Ramirez received Ineffective
Assistance of Counsel and denied
his Constitutional Right to
Effective Assistance of Counsel.

I Mr. Ramirez ask the Court
to appoint attorney to assist
with habeas process.

Mr Ramirez ask for an evidentiary
hearing to dispute the record
necessary to prove allegations
- A disposition hearing also. -
Also attached witness statement by
my brother Jose Ramirez who spoke
to Mr Cosby and told me
to fire my attorney.

Sincerely

Albert

Ramirez

THE EXHIBITS
ARE ONLY LABELED
1 to 13 and pages 1-56
I did NOT label
1A, 1B, 1C, NO.
ONLY, 1 to 13.

They are all relevant
to certain facts
+ allegations to
support my claim
OF. Ineffective assistance
OF COUNSEL TRIAL +
APPELLATE ATTORNEY.

I ASK the courts
All them to NOT
dismiss my ~~CASE~~ ~~PRO~~
Habeas Because
I'm pro se, please appoint
me an attorney OR grant
an evidentiary hearing, or
preliminary hearing let me
prove my claim I
NEED A CHANCE.

I do have A witness my
brother who can testify
to the threats made by
MR. COSBY. COSBY told my
brother to tell me to plea
my brother knows of the threats

COUNSEL did advise me to take
PICA But would not explain
what the PICA WAS.

Also COUNSEL did not tell
me the maximum time
I was facing
I did not know.
I thought the most
I could get was
154ES.

I did not know
MR. COSBY would not
answer any of my questions
or explain anything to me.

He was disrespectful,
MEAN, Rude, unprofessional
and did not provide
effective assistance.

COUNSEL would not call all witnesses
or file motions, change venue,
for private investigator, new
competency evaluation, - See Ex. B + 16

Page: _____

IT NOT FOR TRIPS COSTS
INEFFECTIVE ASSISTANCE OF
COUNSEL MR. FORMER WOULD OF
HAD A STRONGER CASE GOING
INTO TRIAL. MR. FORMER
WAS PREJUDICED BY COUNSEL
LACK OF EFFECTIVE ASSISTANCE.
PLEASE I WOULD PAY FOR
AN ATTORNEY IF I HAD
MONEY EVEN AT SENTENCING
COUNSEL FAILED TO PROVIDE
EFFECTIVE ASSISTANCE.
THIS REAS DENIED A FAY

THIS IS TO HELP PROPERLY PRESENT
PETITION FOR HABEAS. THE FACTS
IN RECORD AND OFF RECORD.
THE CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL AT
TRIAL AND INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL.

I AM TRYING TO SHOW
I SHOULD BE GIVING
AN OPPURTUNITY TO SHOW
AND PROVE MY CLAIM +
ALLEGATIONS AND TO RECIEVE
ASSISTANCE FROM PUBLIC
DEFENDER OFFICE. ON POST
CONVICTION ASSISTANCE.

PLEASE AND THANK YOU
SO MUCH
FOR YOUR TIME HELP
KINDNESS GOD BLESS

IF counsel had effectively represented MR RAMIREZ. IT IS likely that I would OF Had a STRONGER CASE going into TRIAL and this would have affected MR RAMIREZ'S decision to enter into a plea. MR RAMIREZ complained on more than ONE OCCASION TO THE JUDGE about his Frustration with defense COUNSEL. MR. RAMIREZ WAS denied effective ASSISTANCE OF COUNSEL.

I ASK for an ATTORNSY TO HELP. EVIDENTARY HEARING,

I ASK to Re submit my Habeas petition this one to SEND TO SUPREME COURT.
PLEASE and THANK YOU FOR
YOUR TIME God Bless

PO Box Alberto
1059 Ramirez
Santa Fe NM 87501 69897

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RDEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE , ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD MR. COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM , I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT. IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

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page 1

why

EXIST

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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Time	Speaker	Note
9:57:26 AM	CHANDLER	CLOSING ARGUMENT
10:10:27 AM	CHANDLER	CONTINUES CLOSING ARGUMENT
10:45:29 AM		CONTINUES CLOSING ARGUMENT
10:46:27 AM	COSBY	CLOSING ARGUMENT
10:58:56 AM		CONTINUES CLOSING ARGUMENT
11:30:00 AM	CHANDLER	BRIEF REBUTTAL
11:39:16 AM		CONTINUES BRIEF REBUTTAL
11:40:01 AM	COURT	READS INSTRUCTION 19 BEFORE DELIBERATION IS BEGUN
11:41:14 AM	COURT	ANNOUNCES ALTERNATES
11:42:36 AM		JURY EXCUSED TO BEGIN DELIBERATION AND ALTERNATES EXCUSED
11:43:09 AM	DFT	DFT WANTS TO SAY SOMETHING
11:44:05 AM	COURT	YOU CANNOT SAY ANYTHING
11:44:13 AM	OFF RECORD	
3:03:40 PM		JURY SEATED IN BOX
3:04:08 PM	COURT	READS THE VERDICT GUILTY COUNT 1 1ST DEGREE MURDER
3:04:45 PM		GUILTY COUNT 2 TAMPERING WITH EVIDENCE
3:04:58 PM		GUILTY COUNT 3 TAMPERING WITH EVIDENCE
3:05:14 PM	COURT	DFT WISHES TO HAVE THE JURY POLLED, JURY POLLED BY NUMBER
3:06:35 PM	COURT	READS FINAL INSTRUCTION TO JURY BEFORE EXCUSED
3:07:13 PM		JURY EXCUSED FROM SERVICE
3:07:51 PM	CHANDLER	STATES REQUESTS TO MOVE INTO SENTENCING
3:08:07 PM	COSBY	ASKS FOR A 60 DAY EVALUATION
3:08:21 PM	CHANDLER	THIS SENTENCE IS A LIFE PLUS SIX YEARS
3:09:02 PM	COURT	IT IS MANDATORY TO LIFE
3:09:15 PM	COSBY	HE HAS A RIGHT TO AN ALLUCION
3:09:40 PM	COURT	WE WILL SENTENCE AFTER PRESENTENCE REPORT
3:09:59 PM	COSBY	REQUESTING A 60 DAY EVALUATION
3:10:16 PM	COURT	ORDER THE PRE SENTENCE REPORT ,
3:10:31 PM	RECESS	

Exhibit 6

10/11/2013

Tried to Alert Court of
 Conflict of Interest Between
 Counsel and I and Mark 3013
 Record. I was aware.

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Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 88
SSN: [REDACTED] 7793

Page 2

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Date: 04/17/2007 12:15
Provider: KIRAN SHARMA MD

Musculoskeletal system:

General/bilateral: ° Musculoskeletal system: normal

Knee:

General/bilateral: • Knees showed abnormalities ° No tenderness on palpation of the knee ° No pain was elicited by motion of the knee ° Knees demonstrated normal movement ° Knees demonstrated no muscle weakness

Right knee: • Examined

Left knee: • Examined

ASSESSMENT

Bilateral knee pains

PLAN

KIRAN SHARMA MD ordered

• Urinalysis and urine drug screen

• CBC

• A comprehensive metabolic panel

• Serum TSH level

• An X-ray of both knees

• Consultation with a physical therapist

* Refer to MHR for counselling and further evaluation

trying to call mom to find out more about pts mental health, unable to reach her

I was Injured

KIRAN SHARMA MD

Entered data scaled by: KIRAN SHARMA - LCBS Date: 04/17/2007 14:36

Ex-B.A.T. 7.

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Patient: 14154.1 - ALBERTO J. RAMIREZ

Page 2

DOB: [REDACTED] 88

SSN: [REDACTED] 7793

Date: 04/24/2007 11:30

Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG:tid, Qty:21, Days:7, Refills:0

Lexapro 10 MG TABS, SIG:qd, Qty:30, Days:30, Refills:2

Refer to unum orthopaedics

pt has anger issues and is somatising

detailed discussion with brother about pts visits

otc knee brace, pt needs psychiatric help

refer to MHR, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

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page

EXHIBIT 7

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EXHIBIT 7

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
<u>3:06:50 PM</u>		AWARE OF BROTHER BEING PLACED IN FOSTERCARE
<u>3:07:31 PM</u>		GIVING STATEMENT TO DETECTIVE ON JULY 12TH THE DAY OF SHOOTING
<u>3:08:35 PM</u>		TOLD MEMBERS OF JURY NEVER SAW HIM ACT OUT, HE WOULD GET UPSET
<u>3:09:22 PM</u>		DOES NOT REMEMBER WHAT SHE TOLD DETECTIVE, NOW SHE REMEMBERS WHAT SHE TOLD DAVID LOERA
<u>3:11:35 PM</u>		CONTINUES TO REFER TO STATEMENT SHE MADE
<u>3:12:59 PM</u>		BENCH CONFERENCE
<u>3:13:50 PM</u>	CHANDLER	CONTINUES TO REFER TO HER STATEMENT
<u>3:14:33 PM</u>		GO BACK TO THE PHONE CALL, HE WAS MAD AT YOU THE DAY BEFORE THE SHOOTING, "WHAT IS WRONG WITH BEING MAD EVERYBODY GETS UPSET
<u>3:15:09 PM</u>		I DID NOT KNOW HE WAS TRYING TO GET A GUN
<u>3:16:00 PM</u>		REFERS TO HER STATEMENT
<u>3:16:06 PM</u>	COSBY	PAGE AND LINE PLEASE
<u>3:16:20 PM</u>		NO I DID NOT KNOW, EVERYBODY KNEW NOT TO GIVE HIM A GUN
<u>3:16:55 PM</u>		TRAINING, EDUCATION AND EXPERIENCE
<u>3:17:05 PM</u>		YOU WANTED TO KNOW WHY HE DID THAT WHEN HE CALLED FROM JAIL, NOBODY WAS THERE WHEN IT HAPPENED
<u>3:18:13 PM</u>		YOU DO NOT KNOW WHAT HAPPENED AT 512 W. 6TH, "I WAS NOT THERE"
<u>3:19:18 PM</u>		YOU HAVE BEEN TALKING TO HIM EVERY NIGHT
<u>3:19:42 PM</u>		BENCH CONFERENCE
<u>3:20:41 PM</u>	COSBY	RDEX - ABOUT YOUR STATEMENT ABOUT WHAT YOU ARE SAYING YOU WERE TELLING YOUR BROTHER TO APOLOGIZE TO YOUR MAMA
<u>3:21:58 PM</u>		NOT SURE WHY HE WAS WEARING CRUTCHES
<u>3:22:30 PM</u>	CHANDLER	SPECULATION OBJECTION
<u>3:22:40 PM</u>	COSBY	RESPONSE ABOUT WHO GAVE HIM THE GUN "HE WAS HAVING ISSUES ABOUT HE THOUGHT SOMEBODY WAS AFTER HIM"
<u>3:24:25 PM</u>		SHE ALREADY KNEW ABOUT SHOOTING BECAUSE HER MOM CALLED HIM
<u>3:24:37 PM</u>		SHE BARELY TALKED TO ELADIO, NEVER CLAIMED HIM AS STEP FATHER
<u>3:24:59 PM</u>	CHANDLER	RXEX - YOUR CONCERN WAS ABOUT ALBERT'S STATE OF MIND
<u>3:25:49 PM</u>	COSBY	OBJECTION

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EXIBIT 7

Final
Order
Signed
during
trial

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page

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:38 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX. 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE GROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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EXHIBIT 7

Exhibit 8

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1 its discretion in denying a mistrial.

2 **D. Defendant was not prejudiced by the jury seeing his leg restraints**

3 (39) Defendant's fourth issue is that he was prejudiced when the jury saw his leg
4 restraints when he stumbled as he stood up at one point during the first day of trial.
5 However, he concedes that he did not ask the court to make a finding of prejudice or
6 declare a mistrial and asks this Court to review the possibility that the jury saw his leg
7 restraints for fundamental error. The State argues that the factual record does not
8 support Defendant's contention that the jury saw him shackled because all the parties
9 agreed that the table skirt blocked the jury's view.

10 (40) "To preserve a question for review it must appear that a ruling or decision by
11 the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not
12 properly preserved, we consider the claim under the fundamental error exception to
13 the preservation rule. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M. 513,
14 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant
15 handcuffed for fundamental error because the defendant did not request a mistrial, did
16 not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*,
17 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2)
18 NMRA).

Exhibit 8

page 33

E+BIX 9

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for his expert's presence if sur-rebuttal was allowed. [Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent [See Supp. CD, 3:51:56 to 3:52:00], the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. [CD 10-10-13, 4:34:39 to 4:36:02] When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. [CD 10-10-13, 4:36:02 to 4:39:12] Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. [CD 10-10-13, 4:41:38 to 4:42:15]

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. [CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. [CD 10-11-13, 11:45:13 to 3:06:20]

EXHIBIT 9
NO DEFENSE
AT TRIAL

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE, <i>What is this means?</i>
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THRE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINK, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

10/10/2013

Exhibit 9
SEX ABUSE

2015

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Exhibit 9

20
pack

II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland's* two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

Exhibit 1

37 case

That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about how he had not been properly evaluated and represented, the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial.

[See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

30 Exhibit 1 9 Page 37

1. 38
back

told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Schwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything..." Mr. Ramirez continued,

EXHIBIT 11

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EXB. 10

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page

1 observations and opinions alone cannot trigger reasonable doubt about the defendant's
2 competency.").

3 (25) Here, defense counsel merely stated his beliefs that Defendant was not capable
4 of assisting in his own defense and that Defendant did not have the capacity to
5 determine whether or not to testify. In response, throughout the trial, the judge did
6 everything within his power, under the rules, to address the Defendant's concerns with
7 his physical condition and his inability to understand the proceedings, allowing a
8 nurse to examine him during the trial and consistently explaining to the Defendant
9 what was happening. Accordingly, the district court did not abuse its discretion in
10 denying Defendant's request for a forensic evaluation during trial because relying
11 only upon his own observations, defense counsel failed to substantiate his assertions.

12 (26) Further, had the district court found reasonable doubt as to Defendant's
13 competency to stand trial, Defendant would not have been entitled to a competency
14 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
15 only recourse is to request a jury instruction on the issue of competency. *See* Rule 5-
16 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
17 on competency to the court or objecting to the instructions as offered. *See State v.*
18 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 ("Defendant did not

14

EXB. 10

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forestall testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. [RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question

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(citation omitted). “Generally, only an evidentiary hearing can provide a court with sufficient information to make an informed determination about the effectiveness of counsel.” *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 (“A record on appeal that provides a basis for remanding to the trial court for an evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims are heard on petition for writ of habeas corpus . . .”); *State v. Telles*, 1999-NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the “proper avenue of relief [from ineffective assistance of counsel] is a post-conviction proceeding that can develop a proper record”).

{32} Though the district court repeatedly observed that defense counsel was providing excellent representation to Defendant, the court did not hold an evidentiary hearing. Therefore, the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant’s ability to bring such a claim via habeas corpus proceedings.

C. The district court did not abuse its discretion denying a mistrial based on Deputy Loomis’ commentary on Defendant’s silence

{33} Defendant’s third issue is that the court erred in denying his motion for a mistrial based on an alleged improper comment about Defendant’s silence after he had

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ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS. SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMNTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION , IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE , THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

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relates that “for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders...” and that “[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder.” Peter Tyrer, Ruger Mulder, et al, “Personality disorder: a new global perspective,” *World Psychiatry*, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/>.

The two cases, *Flores* and Mr. Ramirez’s, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez’s need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

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Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury "shall be instructed on the issue." In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel's assertion. "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required..." *Drope*, 420 U.S. 162, 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181.

Mr. Ramirez's case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

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deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13,122 N.M. 246. "Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury." *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. [10-10-13 CD B 2:07:30-2:41:36]

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was "not fair" because he wasn't being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. [10-10-13 CD B 10:40:41-10:58:56] The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. [10-10-13 CD B 3:45:47-3:46:20]

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. "The issue of a defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings."

1 representation, motions he wanted filed, and other issues he indicated that he would
2 present in his appeal.

3 (29) Defendant then demanded to be the first defense witness so he could
4 communicate his defense. During his direct examination, Defendant refused to
5 answer many questions directly saying he wanted to "explain everything." Defendant
6 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
7 the Defendant and recess the trial. Later, after the parties rested, Defendant had
8 another outburst, complaining that he had a right to know what the jury instructions
9 would be so that he could file motions. The court told Defendant that he was being
10 well-represented and the instructions were fair.

11 (30) At Defendant's sentencing hearing, Defendant complained to the court that his
12 defense counsel had failed to effectively represent him and that he did not receive a
13 fair trial. Defendant argued that the jury would not have convicted him had it fully
14 understood that he was the victim. The district court assured Defendant that he had
15 received excellent representation and pronounced the sentence.

16 (31) "This Court has repeatedly stated that ineffective assistance of counsel claims
17 are best served through habeas corpus proceedings so that an evidentiary hearing can
18 take place on the record." *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949

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1 competency by Dr. Fink in January 2013, Defendant spoke directly to the court,
2 though he was represented by counsel, and asked for a fifth forensic evaluation to
3 determine his competency. Defendant argued that a new evaluation would show he
4 was suffering from “psychosomatic delusions and hallucinations and severe
5 depression and anxiety.” The judge listened to Defendant’s request and then denied
6 it.

7 (17) This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124
8 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported
9 declaration against competency made prior to trial rose to the level of reasonable
10 doubt. In that case, just before trial, the defendant’s counsel asked the court to find
11 that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant’s
12 counsel cited her own experience with the defendant as the basis of the request, stating
13 her belief that his condition had deteriorated because he had been held in isolation
14 since the competency hearing. *See id.* ¶ 8. The Court held that while “a court may
15 consider defense counsel’s observations and opinions . . . those observations and
16 opinions alone cannot trigger reasonable doubt about the defendant’s competency.”
17 *Id.* ¶ 29. The Court also concluded that the testimony of experts is not required to
18 support a contention of incompetency, but “[i]nstead, a defendant could offer an

9
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1 offer an instruction on competence, nor did he object to the instructions given the jury.

2 Therefore, this issue was not properly preserved for appeal.”).

3 **B. Defendant did not receive ineffective assistance of counsel**

4 {27} Defendant’s second argument is that he was denied effective assistance of
5 counsel because defense counsel “lacked the necessary assistance of [Defendant]
6 himself”; failed to “seek the assistance of necessary experts,” and if more money was
7 required to seek such assistance on an urgent basis counsel should have requested it”
8 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
9 motions to determine competency, resulting in prejudice to Defendant. Counsel has
10 abandoned the claims that trial counsel failed to call other witnesses or made promises
11 to the Defendant because these claims are unsupported by the record. As such, we
12 decline to review these claims.

13 {28} One week prior to trial, the district court denied Defendant’s motion to appoint
14 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
15 counsel informed the court of his decision not to call a witness on the record, as it was
16 against Defendant’s wishes. Defendant then addressed the court, against counsel’s
17 advice, about how his defense had been limited, how his mental illnesses affected him,
18 the amount of media his case was receiving, the quality of his attorney’s

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interview witnesses and other persons.

Contact was made with the 911 caller, Grace Finkey, who witnessed the incident, recognized the shooter, and contacted law enforcement. The victim, Eladio Robledo Valdez was pronounced deceased while at PRMC. According to the mother of the suspect, Albert has a large blue car, containing all his personal belongings. The vehicle was broken down in front of 511 E. 6th Street. Officers responded to the residence and observed the silver blue Cadillac parked on the street in front of the duplex. The vehicle contains a large amount of clothing and other personal items, possibly belonging to Albert Ramirez. The duplex at 511 E. 6th Street is currently vacant. The front window, facing north is open and raised approximately 8". The front and back doors are locked. The window on the east side of the building is unlocked with the screen removed. There are handprints on the exterior of the glass indicating that the window was pushed up to open the window. There are two cinderblocks under the window to provide easy entry into the window. The suspect, Albert Ramirez may be hiding within the vacant duplex to avoid detection and apprehension by law enforcement.

Based on this I believe that evidence relevant to the shooting may be within the residence or the vehicle described, and located at 511 E. 6th Street, Clovis, Curry County, New Mexico.

HEARDAY CANT JUST SEARCH CAUSE WHAT HE BELIEVES, NO MATTER
IF HE'S A COP!!! might be good to try and get
whatever evidence found with the

Affiant is a full-time salaried, sworn Law Enforcement Officer currently employed with the Clovis Police Department. Affiant's current assignment is Detective with the Special Operations Unit, and member of the Major Crimes Unit.

warrant!

SUBSCRIBED AND SWORN TO BEFORE ME IN THE ABOVE NAMED COUNTY OF THE STATE OF NEW MEXICO,

THIS 12 DAY OF July, 2007.

Robert S. Oniz
JUDGE

Robert S. Oniz
TITLE

Robert S. Oniz
AFFIANT

Detective #98
TITLE

APPROVED BY ASSISTANT DISTRICT ATTORNEY

Matthew Chandler ON July 12, 2007

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RETURN AND INVENTORY

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

STATE OF NEW MEXICO

-VS-

2007 JUL 13 PM 3:30

Albert Ramirez,
D.O.B. [REDACTED] 38
SSN: [REDACTED] 7793,
[REDACTED]

D-0905-

Subpoena
CLERK DISTRICT COURT

and a silver blue Cadillac 4-door bearing Texas license W55HHS

I received the attached Search Warrant on 07/12/07 And executed it on 07/12/07
at 2235 Hours. I searched the person or premises described in the Warrant and left a copy of the Warrant with:

None present at scene
(name of the person searched or owner at the place of search)

Together with a copy of the inventory for the items seized. The following is an inventory of the property taken pursuant to the Warrant:

- 1 photo of suspect and unknown black male (Gang Writings)
- 1 paper with writing about shooting people
- 1 letter to Albert Ramirez denying his SSI benefits

This inventory was made in the presence of

Ricky M. Smith
Applicant for Search Warrant

and Randy Pitcock
Owner or other witness


Signature of Officer or Detective

Randy Pitcock
Signature of Owner or Witness

Return made this _____ day of _____, 2007 at _____ hours.

(Judge Clerk)

After a careful search, I could not find at the place, or on the person described, the property described in this Warrant.

(Officer)

(Date)

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*Wrote
over you?
Thank?**EVIDIT 11*NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICESTATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,

D.O.B. [REDACTED] 88

SSN: [REDACTED] 7793

Diana Hunt
CLERK DISTRICT COURTD-0905- *SW* 0200 7 00 001

and a silver blue Cadillac 4-door bearing Texas license W55HHS

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being dully sworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, stenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED
CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED] Social Security Number [REDACTED], Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

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HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS JUST TV SECTIONS AUTOFINDER JUNE 13, 2014

Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fornoff
CMI Projects Editor
rfornoff@cnjonline.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Eladio Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 18, waited outside the home the morning of July 12, 2007, with a loaded .22 caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head execution style.

Chandler called the killing "premeditated...calculated...and cold blooded." He noted a pre-sentence report branded Ramirez a malingerer who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good kid," Israel Ramirez told Hartley. "If I could switch places with him I would."



CNJ staff photo: Robin Fornoff
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Eladio Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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Wind: S 13 mph
Humidity: 63%

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EXIBIT

page

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	GOSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED , THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

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EXHIBIT 13

HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS JUST TV SECTIONS AUTOFINDER

JUNE 13, 2014

Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnson: CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Teddy Hartley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disturbed young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and talked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez' mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Debra Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez' criminal case had been put on hold pending the outcome of the evaluations.

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Filed Under: News Tagged With: accused, albert, competent, mother, old, ramirez, ruled, stand, suspect, trial

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Wind: 6 to 10 mph
Humidity: 83%

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HOME NEWS SPORTS OBITUARIES BLOGS CLASSIFIEDS LIST-TV SECTIONS AUTOFINDER

JUNE 13, 2004

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson: Freedom Newspapers

A tip from a citizen led to the arrest of a Clovis teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W. 13th St. around 8:30 a.m. Sunday morning, a press release from Clovis police said.

He is accused of shooting Eladio Rubledo, 39, multiple times in the front yard of 512 W. 6th St., a residence Rubledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Curry County Adult Detention Center on \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Rubledo laying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Rubledo with his hands outstretched toward the victim as if he was holding a gun and then two more shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Rubledo, who was bleeding from the head and unresponsive, the affidavit said.

Rubledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Rubledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Networks program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

Calls to Debra Ramirez seeking comment were not returned Monday.

EX-BIT
13

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JUNE 13, 2014

Teen charged with murder has competency issues

July 16, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Sharna Johnson: CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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JUNE 13, 2014

Accused killer takes witness stand

October 10, 2013

By Robin Fornoff

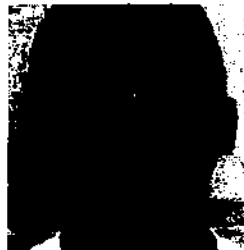
CMI PROJECTS EDITOR

rforhoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on west Sixth Street for work.



Albert Ramirez
On trial for murder

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.

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NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan

☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

- I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
- I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
- I understand that there are limitations to treatment.
- I understand that there are potential adverse outcomes to treatment.
- I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
- I understand that my treatment sessions will address my treatment goals.
- I will complete assigned treatment homework (if any is assigned by my clinician).
- Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)

* 69592 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature Date

Beatrice Narcisco, PhD, LPCC
Clinician (Printed/Typed Name)

B. Narcisco, PhD, LPCC 8/30/16
Clinician Signature Date

Eileen R. Missall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)

Eileen R. Missall 8/30/16
Reviewer Signature Date

Inmate Name: Ramirez, AlbertoNMCD#: 69597Facility: CNMCF/MHTC

Treatment Plan

Form CD-180108.1 (Rev. 06/16/14)

- could mean a
- 1) 3 choices Better Same or Worse
 - 2 Take control one person 24/7 myself.
 - 3) (RESPONSIBILITY) Ability to respond rather than react.
- 10-15. emotionally stop reacting. trying slips from progress.
- Self-Defense Cops

Mental illness is no excuse 4 bad behavior

I'm Sorry I take responsibility

in learning the ability to respond.

Thinking about was very inappropriate. One goal to control one behavioral

I don't think impulsivity, I should be charged twice for the same. global security. I didn't mean it in an inappropriate way in impulsive way.

That's what I'm looking for in therapy.

☐
CHMCFMRLKMU
P.O. Drawer 1728
Las Lunas, NM 87031☐
GCCF
P.O. Box 520
Santa Rosa, NM 88425☐
LCCF
6900 W. Millen Dr.
Hobbs, NM 88244☐
PNM
P.O. Box 1059
Santa Fe, NM 87504☐
SNMCF
P.O. Box 639
Las Cruces, NM 88004☐
SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004☐
WNMCF
P.O. Drawer 350
Grants, NM 87020☐
NENMDF
185 Doctor Michael Jenkins Rd
Clayton, NM 88415

Name _____

No. _____ Unit _____

START

Date: _____

ALL THESE ARE
PART OF OLD PETITION THAT
WAS DENIED AND NO
LAWYER TO ASSIST DENIED.

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(A B C D E)

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4.25.17
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pages

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P.O. Box 520
Santa Rosa, NM 88435

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6900 W. Milken Dr.
Hobbs, NM 88244

☐ FNM
P.O. Box 1059
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☐ SNMCF
P.O. Box 639
Las Cruces, NM 88004

☐ SNMCF-POU
P.O. Box 20005
Las Cruces, NM 88004

☐ WNMCF
P.O. Drawer 230
Grants, NM 87020

☐ NEMMCF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____
No. _____ Unit _____

Date: _____

Counsel

MR COSBY REFUSED TO ADDRESS COURT AND REQUEST A
MISTRIAL WHICH IF RAISED ISSUE PROBABLY START TRIAL
OVER IF LAWYER HAD DONE A BETTER JOB OF
PROTECTING MY RIGHTS

ALSO WITNESS PRICILLA LOPEZ AND RICKY JARAMILLO
249 WITNESSES WOULD OF TESTIFIED THAT I AM
FLAT SKINNY AND HELPED PROVE I WAS THE
ONE BEING CHASED IN YARD AND THAT DETECTIVE
WAS MISLEADING WITNESSES.

COUNSEL AT TRIAL FAILED TO CALL DE FANK AS A WITNESS
AT TRIAL AS I ASKED. DE FANK WOULD OF TESTIFIED
THAT I WAS NOT COMPETENT AND MENTALLY ILL

I ASKED COUNSEL TO CALL DE JOHNS BUSINESS TO
CROSS EXAMINE.

I ASKED COUNSEL TO INVESTIGATE MENTAL ILLNESS DISFUSE
AS I HAVE FAMILY HISTORY OF MENTAL ILLNESS + INTOXICATION
HISTORY AND DRUGS.

I DID EXPRESS DISSATISFACTION WITH COUNSEL AND THE
COURT FAILED TO INQUIRE INTO THE MATTER.

WITNESS
MR COSBY PROMISED IF I TESTIFIED I WOULD BE
ABLE TO SPEAK OF SEXUAL ABUSE BY NEIGHBOR AND
MY MOM'S BOYFRIEND HE WENT TO DISCRIMINATE ME.

IF COUNSEL DID NOT LIE I WOULD NOT HAVE TESTIFIED
AND TRIAL MAY HAVE BEEN DIFFERENT TOGETHER
THESE ERRORS ALL THE PREJUDICE I'D BE ENTITLED
TO A NEW TRIAL.

COUNSEL AT TRIAL FAILED TO GIVE ME THE ENTIRE
DISCOVERY AND DID NOT DISCUSS ANY OF THE
CASE WITH ME. BECAUSE I WOULD HAVE TAKEN THEM.

③

☐ CNDAC/CNDAL/CNDL
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Las Cruces, NM 88004

☐ WNMCF
P.O. Drawer 250
Grants, NM 87020

☐ NERMDF
185 Doctor Michael Jenkins Rd.
Clayton, NM 88415

Name _____
No. _____ Unit _____

Date: _____

COUNSEL did not call IS/Car Ramirez who would OF testified Robledo hit me and was violent when I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was aggressive violent + attacked him everytime he tried to go see me

COUNSEL failed to get medical records evidence to show I was physically injured at time of crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on record to speak to show I timely moved for removal of counsel, But the court refused to let me say anything about conflict between I and counsel.

I tried to put ⁱⁿ record what trial counsel said after I tried to fire him.

Court refused to ^{inquire} into it. If the court had I'd of got a new attorney or a ^{mistake} + asked to represent myself.

I was denied my Sixth amendment right to effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow me to speak on record

Thanks very much.

1

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO J. RAMIREZ

Defendant-Petitioner,

S.Ct. No.

(leave blank; court will assign)

VS.

John Gay

District Ct. No.

(Name of Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

ALBERTO RAMIREZ

Defendant

Petitioner pro se

ALBERTO RAMIREZ

PO BOX 1059

SANTA FE NM 87504

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

(address information)

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

Abelto Ramirez V. Johnson (your name v. Warden's name), District Court No. D-905-CR-2007-434
June 27, 2007

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

- ① denying defendant his both administrative
Right to effective assistance of
counsel and compulsory process
when his attorney refused to call
Dr. Maxwell Swartz to testify at
right competency hearing of trial
- ② whether petitioner's criminal convictions
were obtained in violation of his
Federal Right to due process and a
fair trial when pro- & re-charged
acts were introduced absent
a hearing as required under Rule 11-401 B

- (B) Whether petitioner's criminal convictions were obtained in violation of his federal right to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404 B?
- (C) Whether Berg shackled during trial and jurors observed him and if cleared him due process?
- (D) Sufficiency of evidence?
- (E) Prosecutor's misconduct while prosecutor called defendant's name to society and cross examined about doing legal research, to get jury to buy his story?
- (F) Double Jeopardy - charged twice for same time disposal of sharks and gun. denied due process

see attached page C & E

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

1st degree murder

2 counts of tampering with evidence

Life + fine six years

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

February 7th 2014 the supreme

court of New Mexico State of New

Mexico vs. Alberto Hernandez S.Ct. NO

74, 576. Issued Jan 18th 2017.

3. Tell the story of what happened in your court case:

My attorney would not speak to

me, we had conflict of interest

large, would not file motions for

change of venue even though extensive

media coverage

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

I call in front of jury because
 I was shackled to table Sheriff
 ordered me to say NO I did not
 fall trial attorney said IF I
 Refuse to take plea he will not
 provide positive assistance
 See attached page 4

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1:

petitioner was denied his 6th
 amendment right to effective assistance
 of counsel and his right to
 compulsory process when his attorney
 failed to call Michelle Swartz
 to rebut to states mere assertions
 of malfeasance and to testify →

1/

prior bad acts evidence wrongly admitted,

Trial lawyer refused to call
MAYAN SWARTS to raise
defense issue of capacity or
INSANITY.

Argument.

point 1.

petitioner was denied his 6th
amendment right to effective
assistance of counsel and his
right to compulsory process
when his attorney failed to
call MAYAN SWARTS to rebut
to states MCL assertions of
manipulating and to testify at
trial about defendant's state of mind.
Is it ineffective assistance
to ignore a defendant's right to
compulsory process.

FORM 9-702. PETITION FOR WRIT OF HABEAS CORPUS TO..., NM R CR Form 9-702

About defendant's state of mind IS + REFUSE
 assistance to ignore a defendant's right to
 compulsory process?

POINT 2:

prior bad acts evidence should
 not been admitted introduced
 and this introduction denied
 the petitioner his right to a
 fair trial

POINT 3:

The petitioner was likely prejudiced
 and denied his right to a fair trial
 when his fall was a direct result
 of being shackled and his attorney
 did not have juries polled
 regarding whether they saw
 the shackles or not.
 See attached Page 456.
 (Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

4. Sufficiency of Evidence

Jackson v. Virginia 443 U.S.
307 - 317 (1979) did not
destroy or hide evidence

5. Prosecutor Misconduct.

State v. Sosa 2069 NMSC
056, 35, 147, NMBSI 223
P301, 348 called defendant

A menace to Society and committed
by doing illegal research to
Bear his charges.

6. double jeopardy

State v. deGraff
2006, NMSC, 011, 34, 139 NM
2d, 131 P3d, 61.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) Exigent hearing or removal of the
Grant full habeas attorney to represent

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Alberto Ramirez

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 25th day of

JAN 2019.

Alberto Ramirez - PO Box 1508

Defendant-Petitioner, pro se

Santa Fe 87504

Credits

[Adopted effective Dec. 31, 2014.]

STATE OF NEW MEXICO
CURRY COUNTY
NINTH JUDICIAL DISTRICT COURT

ALBERT RAMIREZ,

Petitioner,

v.

D-0905-CR-2007-00434

JAMES MULHERON, warden

Respondent.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Albert Ramirez, through his counsel Liane E. Kerr, and pursuant to NMRA Rule 5-802 and Article II, Sections 7, 12, 14, 15 and 18 of the New Mexico Constitution and the Fifth, Sixth and Fourteenth Amendments of the United States Constitution; and respectfully submits this Amended Petition for Writ of Habeas Corpus. *DRAFT*

Mr. Ramirez respectfully requests that this Honorable Court issue a Writ of Habeas Corpus and vacate, set aside or correct Mr. Ramirez's sentence and order of confinement in D-905-CR-2007-0434. Mr. Ramirez contends that he was denied his state and federal constitutional right to due process and a fair trial because the cumulative effects prevented him from proving his innocence. The following amendments have been made to the pro se petitions filed on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

1. **Place of Confinement:** Mr. Ramirez is detained by Warden James Mulheron at the Southern New Mexico Correctional Facility in Dona Ana, NM.

2. **Nature of Proceedings Resulting in Confinement:** Petitioner was found guilty following a change of plea on the date of his jury trial on January 26, 2009 of two counts of tampering

with evidence and first degree murder in the first degree. Petitioner moved to withdraw his plea and the court denied it; however, the Supreme Court remanded the matter, allowing Petitioner to withdraw his plea. Jury trial was ultimately held on October 10, 2013 and lasted four (4) days, after which Petitioner was found guilty of the murder and tampering charges.

3. Judgment and Sentence Resulting in Current Confinement. Petitioner was sentenced in the Ninth Judicial District Court, Honorable Teddy L. Hartley presiding, on January 8, 2014 to a consecutive sentence on each of the counts: a period of Life on the murder count plus six (6) years for each of the tampering counts in the New Mexico Department of Corrections.

4. Direct Appeal. On February 7, 2014, Petitioner appealed his original conviction to the Supreme Court of New Mexico in *State v. Ramirez*, S. Ct. No. 34,576 and a mandate affirming the trial court was issued on January 18, 2017.

5. Prior Petitions. Petitioner filed a Petition for Writ of Habeas Corpus on March 22, 2017; April 25, 2017; June 20, 2017 and July 17, 2017.

6. Habeas Representation/Timeliness of Petition: By Order of the Court, the Public Defender, Amanda Stephenson, entered an appearance on August 27, 2017. Ms. Stephenson filed two requests for extension, one on October 23, 2017 and again on January 19, 2018, making the Petition due on or before April 19, 2018. Due to a conflict, the Public Defender's Office recently reassigned the Petitioner's case to Liane E. Kerr, who requested a sixty day extension in order to fully review the case, meet with her client and file the brief. The request was opposed by the State. Consequently, this Petition is filed without fully meeting with Mr. Ramirez.

7. **Relief Requested:** This petition seeks to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.

ISSUES PRESENTED IN THIS PETITION:

- a. Whether Petitioner was denied his sixth amendment right to effective assistance of counsel and compulsory process when his attorney refused to call Dr. Maxann Shwartz to testify at either the competency hearing or at trial?
- b. Whether Petitioner's criminal convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404b?
- c. Whether Petitioner was denied his right to due process when jurors observed him shackled during trial?

STATEMENT OF FACTS/PROCEDURAL HISTORY

A. Procedural History.

Petitioner was indicted on July 20, 2007 and charged with first degree murder and two counts of tampering with evidence. [Exhibit A]. On January 26, 2009, the first day of his jury trial, Mr. Ramirez pled guilty to two counts of tampering with evidence and first degree murder in the first degree, with tampering counts running concurrent to the life sentence.

Mr. Ramirez moved to withdraw his plea on February 25, 2009, a motion the trial court heard on June 25, 2009, but denied on July 29, 2009. Following an appeal of the denial to withdraw plea, the New Mexico Supreme Court reversed the denial on July 6, 2011 and remanded for a trial on the merits which was ultimately held on October 7-11, 2013 where jurors were instructed to find first degree murder and Petitioner was found guilty of first degree murder. [Exhibit B]. Although Petitioner's plea exposed him to a life sentence only, following trial, Petitioner was sentenced to the

life sentence and each tampering count consecutively, earning him an additional six years for a term of life plus six years. [Exhibit C].

1) Facts Regarding Introduction of Prior Bad Acts Evidence

During trial, the State introduced three incidents of bad acts evidence, which Mr. Ramirez maintains was error. Over objection, the State introduced evidence that Mr. Ramirez broke his mother's windshield. [Exhibit D: Transcript, 10/8/13, 4:03:49-4:08:21]. Again over objection, the State introduced evidence that the victim's home had been burglarized with the implication that it was Mr. Ramirez who made the entry. [Exhibit E: Transcript, 10/8/13, 4:14:04; 10/11/13, 8:5526-8:59:31]. A final bad acts reference was introduced when the State called a firearms dealer, who testified that Mr. Ramirez sought to purchase a firearm from him. [Exhibit F: Transcript, 10/8/13, 4:15:55-4:25:21].

2) Facts in Support of Prejudice from Shackles Observation

During a break, as jurors were leaving the courtroom, Mr. Ramirez tripped as a result of wearing shackles. He maintained that jurors observed him fall and saw his shackles as a result. [Exhibit G: Transcript, 10/7/13, 3:10:07-3:11:12].

3) Facts Regarding Petitioner's Competency

A notice to determine competency was filed on January 14, 2008 [Exhibit H] and the defendant was evaluated by Dr. Maxann Shwartz and determined incompetent. [Exhibit I]¹. On January 17, 2008, the Defendant was committed to the New Mexico Behavioral Health Institute at

¹ Although confidential, Mr. Ramirez disclosed Dr. Shwartz' report and provided a copy attached to his pro se Petition for Habeas relief and therefore, any concerns about confidentiality are waived.

Las Vegas (NMBHI) for a period of three months. **[Exhibit J]**. A hearing was held on September 15, 2008, where Dr. Burness from NMBHI testified that she believed the Petitioner was malingering. **[Exhibit K, L]**. By Order of the Court, Petitioner was deemed competent to stand trial on September 16, 2008. **[Exhibit M]**. The record does not reflect that Dr. Shwartz was called to rebut the testimony of Dr. Joanne Burness at the final hearing regarding competency. The State then identified Dr. Burness on its witness list and the Defense filed a Motion in Limine to address statements made to Dr. Burness. **[Exhibit N]**.

Following the remand by the Supreme Court on the plea withdrawal issue, another Motion for Mental Evaluation was filed on September 22, 2011 **[Exhibit O]**; an Order was entered and Petitioner was again sent to NMBHI for an evaluation **[Exhibit P]**. In the interim, further forensic evaluation at NMBHI was ordered by the Court **[Exhibit Q]**. Subsequently, Mr. Ramirez was deemed competent to stand trial on March 1, 2013. **[Exhibit R]**.

During trial, the issue of Mr. Ramirez' competency arose repeatedly. During voir dire, the defense attorney informed jurors that there were matters concerning Mr. Ramirez' mental health. **[Exhibit S, Transcript: 10/7/13, 12:05]**. The Court noted that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. **[Exhibit T, Transcript: 10/8/13, CD B 8:42:10-8:43:50]**. Mid-trial, Mr. Ramirez issued a rambling statement about his health and said that he heard voices and was concerned his attorney was mad at him. **[Exhibit U, Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58]**. Also mid-trial, the Defense reminded the Court of competency issues and alerted the Court that Mr. Ramirez did not understand the proceedings and was incapable of assisting in his defense. **[Exhibit V, Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49]**. In response, the Court; however,

opined that Mr. Ramirez was malingering but noted he had never seen a defendant act the way Mr. Ramirez was acting. [Exhibit W, Transcript: 10/9/13, 10:18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20]. The Defense again asked for a review of competency. [Exhibit X, Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46]. Mr. Ramirez specifically asked that the jury be told about his medical problems and specifically told the Court that he did not believe the trial to be fair, as the right questions were not being asked and Dr. Schwartz' testimony was necessary to him having a fair trial. [Exhibit Y, Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15]. Throughout, the Defense alerted the Court that Mr. Ramirez was difficult to represent. [Exhibit Z, Transcript: 10/10/13, CD B 2:06:30-2:41:36]. The Defense; however, informed the Court and the State that it would not be submitting a competency instruction. [Exhibit AA, Transcript: 10/10/13, 4:32:27-4:35:41].

B. Facts of the Case.

Petitioner, eighteen year old Albert Ramirez, sometimes resided with his mother, Debra Ramirez and step-father, Elado Robledo at their home in Clovis, New Mexico. Some of his belongings remained at the residence when he was ordered to leave the home due to a disruption with his step-father. When Albert Ramirez returned to the home to collect some of his belongings on July 12, 2007, he argued with his step-father and shot and killed Elado Robledo. This was witnessed by neighbor Sam Saiz, Jr. and another person who was driving by at the time.

During the investigation, law enforcement located Petitioner's shoe, a pair of shorts and some clothing in a trash dumpster several blocks from the scene. Although no firearm was located, jail calls were intercepted where Petitioner directed his cousin to an area to remove a "ban ban", something Petitioner admitted was a gun that he used in self-defense during the shooting.

The State introduced prior bad acts during trial. Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield.

During his testimony, the Petitioner claimed self-defense and told jurors that the shoe and shorts were a result of his step-father's assault. He said that his step-father had a gun and he had something in his hands, causing the Petitioner to fear for his safety. During cross-examination, Petitioner refused to respond to the prosecutor's questions, electing instead to chastise his defense counsel.

During a break, the Petitioner tripped over a table due to the shackles on his ankles. He complained of prejudice because jurors were present in the courtroom. The trial court held that jurors could not see the shackles, as a skirt covered the trial table. None of the jurors was questioned regarding the incident and what he/she saw, nor did trial counsel request a mistrial.

ARGUMENT

Petitioner, Albert Ramirez, adequately alleges claims, which entitle him to legal argument and/or an evidentiary hearing on the following grounds: Denial of his sixth amendment right to effective assistance of counsel and denial of his due process right to a representative venire panel.

- I. PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT OF COMPULSORY PROCESS WHEN HIS ATTORNEY FAILED TO CALL DR. MAXANN SHWARTZ TO REBUT THE STATE'S MERE ASSERTIONS OF MALINGERING AND TO TESTIFY AT TRIAL ABOUT THE DEFENDANT'S STATE OF MIND.**

A. It is Ineffective Assistance of Counsel to Ignore a Defendant's Right of Compulsory Process.

The Sixth Amendment's right to counsel guarantee requires that effective assistance of counsel be given at all stages of the proceedings, and New Mexico has affirmed this right. U.S. Const. amends VI and XIV; N.M. Const. Art. II § 14; *State v. Robinson*, 99 N.M. 674, 662 P.2d 1341 (1983). Defense counsel's performance is measured against "an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *State v. Orona*, 97 N.M. 232, 638 P.2d 1077 (1982); *State v. Dean*, 105 N.M. 5, 727 P.2d 944 (Ct. App. 1986) (standard is whether defense counsel exercised the skill, judgment, and diligence of a reasonably competent attorney).

As noted by *Strickland v. Washington*, "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction...has two components:

- 1) First, the defendant must show that counsel's performance was deficient.
- 2) Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687.

In order to prevail on an ineffective assistance claim, the defendant must show her counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced. *State v. Talley*, 103 N.M. 33, 34, 702 P.2d 353, 354 (Ct. App. 1985). Prejudice is measured by "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland v. Washington*, 466 U.S. 668, 695, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984). The test for judging any claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104

S. Ct. at 2064. In reviewing an ineffectiveness claim, the entire proceedings must be considered as a whole. *Id.*; *State v. Talley*, *State v. Lovato*, 110 N.M. 146, 147, 793 P.2d 276, 277 (Ct. App. 1990).

In cases of egregious failure by trial counsel, defendants are relieved of the burden of establishing prejudice due to “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” *United States v. Cronin*, 466 U.S. 648, 659 (1984). The *Cronin* court described three such circumstances:

- (1) denial of counsel altogether;
- (2) defense counsel’s failure “to subject the prosecution’s case to meaningful adversarial testing”; and
- (3) when the accused is “denied the right of effective cross-examination.” *Id.*

This is such a case. Counsel failed to subject the prosecution’s case to meaningful adversarial testing. *State v. Aragon*, 2009-NMCA-102, ¶ 15, 147 N.M. 26, 216 P.3d 276 (prima facie demonstration of ineffective assistance where trial counsel failed to secure an expert necessary to explain the State’s evidence).

B. Trial Counsel Erred in Failing to Call Dr. Maxann Schwartz as a Witness to Rebut the State’s Mere Assertions of Malingering and Denied Mr. Ramirez his Rights to Compulsory Process and Fair Trial when he Refused to Call Dr. Schwartz to Testify Regarding Mr. Ramirez’ Mens Rea.

Mr. Ramirez was evaluated by an accredited psychologist, Dr. Maxann Schwartz, who found him incompetent to stand trial and who did not find malingering. Dr. Schwartz was not called at the final hearing to determine competency to testify about Mr. Ramirez’ present competency and against the state’s assertion of mere malingering. As a result, the Court could only consider the findings of Dr. Burness, from NMBHI, who testified that she believed Mr. Ramirez was pretending not to understand. The Court relied on this testimony to adjudge Mr. Ramirez competent to stand trial.

Although Mr. Ramirez requested that his attorney call Dr. Shwartz as a witness at trial to address his state of mind, his counsel refused to do so. This failure to call Dr. Shwartz to testify as to competency at the time of the event resulted in a denial of Mr. Ramirez' right of compulsory process. Criminal defendants have the right to put before a jury evidence that might influence the determination of guilt.' *Taylor v. Illinois*, 108 S. Ct. 646 (1988) citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)(criminal defendant's conviction reversed and remanded because he was not allowed to examine government documents that may have affected the outcome of the trial)).

The right to present a defense is "as American as apple pie". Defendants are constitutionally entitled to: be heard, effectively present evidence central to their defense, call-witnesses to testify on their behalf, and rebut evidence presented by the prosecution. It is well established that the Sixth Amendment guarantees the right of Confrontation. As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to call witnesses to testify on their own behalf and if necessary, to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. *See* N.M. Const., Art. II, Sec. 14 ("[i]n all criminal prosecutions, the accused shall have the right . . . to have compulsory process to compel the attendance of necessary witnesses in his behalf . . ."); U.S. Const. amend. VI ("[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . ."). Without this right, Defendant asserts, his broader right to a fair trial, guaranteed by the Fourteenth Amendment to the United States Constitution and by Article II, Section 18 of the New Mexico Constitution, was imperiled. *See generally* Peter Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71, 166-70 (1974).

Few rights are more fundamental than that of an accused to present his own defense" *Taylor v. Illinois*, 108 S. Ct. 646 (1988); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). Our United States Supreme Court has held that the right to present a defense consisted of the right to compel the attendance of witnesses and offer their testimony and that such a right "stands on no lesser footing than other Sixth Amendment rights that we have previously held applicable to the states.'" *Taylor v. Illinois*, 108 S. Ct. at 652-653 (quoting *Washington v. Texas*, 388 U.S. 14, 18 (1967)). Such a right "is an essential attribute of the adversary system itself." 46 *Id.* (citing *United States v. Nixon*, 418 U.S. 683 (1974)(President's duty violated his constitutional right "to have compulsory process to compel the attendance of necessary witnesses in his behalf"). See also N.M. Const., Art. II, § 14; see *State v. Cooley*, 19 N.M. 91, 140 P. 1111, 52 L.R.A., N.S., 230 (1914).

Mr. Ramirez was charged with first degree murder—a charge that on its face requires a showing that his actions were willful and deliberate and which requires a showing of premeditation. [Exhibit B]; See *State v. Montoya*, 1963, 72 N.M. 178, 381 P.2d 963; *State v. Ybarra*, 1918, 24 N.M. 413, 174 P. 212 (essential elements of murder in the first degree include the elements of deliberation and premeditation). "An abnormal mental condition may influence the probability that a defendant premeditated and deliberated-and so be taken into account by a jury in determining whether those states of mind existed in fact (beyond a reasonable doubt)-even though it did not eliminate the capacity for premeditation." *United States v. Peterson*, 509 F.2d 408, 416-17 (D.C. Cir. 1974). "[E]xpert testimony is admissible if it merely support[s] an inference or conclusion that the defendant did or did not have the requisite mens rea." *United States v. Bennett*, 161 F.3d 171, 183 (3rd Cir. 1998) (quoting *United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997)). Dr. Schwartz' testimony was relevant, we note that New Mexico courts have long allowed such expert testimony

relating to a defendant's mental state at the time of the commission of the offense. *See id.*; *see also State v. Elliot*, 96 N.M. 798, 635 P.2d 1001 (Ct. App. 1981); *State v. Smith*, 80 N.M. 126, 452 P.2d 195 (Ct. App. 1969). Regardless, Dr. Shwartz was not called at trial to testify about Mr. Ramirez' present competency and against the state's assertion of mere malingering. *State v. Balderama*, 88 P.3d 845, 135 N.M. 329 (2004).

Counsel's failure to pursue a potentially meritorious defense raises substantial questions of ineffective assistance counsel. *See State v. Luna*, 1979-NMCA-048, ¶27, 92 N.M. 680 (Court addressed issues relating to ineffective assistance of counsel for failure to file pre-trial motions regarding charge of conspiracy when 3 other co-defendants had that particular charge dismissed, leaving no one to conspire with). "The testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies...counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986)(internal citations omitted); *see also Strickland*, 466 U.S. at 687-88.

Reasonable professional performance includes a duty to investigate all reasonable lines of defense. *Fisher v. Gibson*, 282 F.3d 1283, 1291 (10th Cir. 2002), *citing Strickland*, 466 U.S. at 691. The failure to pursue information from a key witness regarding the basis of the accused's most important defense cannot be considered sound trial strategy. *Sanders v. Ratelle*, 21 F. 3d 1446, 1456 (9th Cir. 1994). Counsel is ineffective if he fails to conduct an adequate investigation into the defendant's most viable theory of the defense. *Bigelow v. Williams*, 367 F.3d 562 (6th Cir. 2004) (reasonable prudence should lead lawyer to recognize the importance of potential witness testimony).

The failure to pursue an adequate defense may establish grounds for finding ineffective assistance of counsel. *State v. Barnett*, 1998-NMCA-105, ¶ 30, 125 N.M. 739 citing ABA Standards for Criminal Justice Pleas of Guilty, Standard 14-3.2 (2nd edition 1980).

Whether defense counsel's actions were unreasonable or caused prejudice cannot be established by the trial record; *State v. Plouse*, 2003-NMCA-048, ¶ 15, 133 N.M. 495, 64 P.3d 522; rather, a habeas proceeding is the appropriate procedure, so that "the defendant may actually develop the record with respect to defense counsel's actions." *State v. Arrendondo*, 2012-NMSC-013, ¶ 38. New Mexico appellate courts frequently remand claims of ineffective assistance of counsel brought on direct appeal for further evidentiary hearings. *State v. Hunter*, 2006-NMSC-043, ¶30, 140 N.M. 406, 143 P.3d 168. "[H]abeas corpus proceedings are the preferred avenue for adjudicating ineffective assistance of counsel claims, because the record before the trial court may not adequately document the sort of evidence essential to a determination of trial counsel's effectiveness." *Id.* (internal quotation marks and citation omitted). Thus, we have held that an evidentiary hearing in most cases "may be necessary." *Id.* (internal quotation marks and citation omitted).

Defendant's ability to confront his accuser and to obtain compulsory process, protected by the Sixth Amendment to the United States Constitution as well as Article II, Section 14 of the New Mexico Constitution, was compromised. As a result, Mr. Ramirez was denied his right of due process contrary to N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 and compulsory process as guaranteed by N.M. Const, Art. II, Sec. 14 and U.S. Const. Amend. VI.

"A defendant is not entitled to an attorney who will 'leave not the smallest stone unturned'

...but when the defendant has but one stone, it should at least be nudged.” *Coleman v. Brown*, 802 F.2d 1227, 1234 (10th Cir. 1986)(internal citations omitted). Mr. Ramirez submits that failure to call Dr. Shwartz as a witness, per his request, was tantamount to ignoring a boulder.

II. PRIOR BAD ACTS SHOULD NOT HAVE BEEN INTRODUCED AND THEIR INTRODUCTION DENIED THE PETITIONER HIS RIGHT TO A FAIR TRIAL.

A Defendant is presumed innocent and is entitled to due process and a fair trial. U.S. Const., amend V., XIV; N.M. Const., art. II § 18.” *State v. Martin*, 1984-NMSC-077, ¶ 17, 101 N.M. 595 (fair trial); U.S. Const., amends VI and VII, and N.M. Const., Art. II, sec. 14 and 18 (presumption of innocence); and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

The evidence was not relevant. It is the state's burden to establish the relevancy of the proffered evidence *State v. Herrera*, 92 N.M. 7, 582 P.2d 384 (Ct. App.), *cert. denied*, 91 N.M. 751, 580 P.2d 972 (1978). Rule 404(B) is a specialized rule of relevancy which requires counsel to identify the consequential fact to which the proffered evidence of other acts is directed. *State v. Aguayo*, 114 N.M. 124, 835 P.2d 840 (Ct. App), *cert. denied*, 113 N.M. 744, 832 P.2d 1223 (1992). It is only then, after the proponent has provided the trial court with an adequate basis, that the trial court should decide whether the probative value of the evidence is not substantially outweighed by the prejudicial impact. *State v. Beachum*, 96 N.M. 566, 568-69, 632 P.2d 1204, 1206-07 (Ct. App. 1981)(emphasis added). Such evidence should not be received when "very probably its sole result, or at least its overwhelming result, will be that of establishing defendant's bad character, or his disposition or propensity to commit crime, as the basis for an inference that he committed the crime

with which he is charged and for which he is being tried." *State v. Mason*, 79 N.M. 663, 667, 448 P.2d 175, 179 (Ct. App.), *cert. denied*, 79 N.M. 688, 448 P.2d 489 (1968).

As noted by the Court of Appeals in *State v. Andrade*, 1998-NMCA-031, ¶12

[o]ur rules of evidence, following longstanding legal tradition, insist that a defendant not be convicted by a jury simply on evidence that the defendant is a bad person." *citing* Rule 11-404 NMRA.....[e]vidence of a defendant's prior misconduct ordinarily is not admissible to support the inference that the defendant has a propensity to commit unlawful acts and therefore is likely to have committed the charged act. New Mexico has been particularly strict in limiting evidence of prior crimes." *citing State v. Wrighter*, 1996-NMCA-077.

Although evidence of other bad acts may be relevant, the risk that the jury will convict because Defendant is a bad person and needs to be punished creates a prejudicial effect. Rule 11-404 (b) provides that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith or to show criminal propensity. *See State v. Roybal*, 115 N.M. 27, 846 P.2d 333 (Ct. App. 1992)("Generally, proof of other crimes has a tendency to prejudice the minds of the trier of facts and predispose them to a belief in the accused's guilt. ").

Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield. The State presumably sought protection under Rule 11-404 (b) as indicated below.

The broken front window was never proven to be the Defendant. Incredibly, the State sought introduction of this act to show motive. The evidence was not relevant to defendant's motive to

commit the instant offense, as the State could not prove that it was the Defendant who broke the window and not just a random act. *See e.g. State v. Ruiz*, 119 N.M. 515, 892 P.2d 962 (Ct. App. 1995); *State v. Williams*, 117 N.M. 551, 874 P.2d 12 (1994)(prior relationship with victim or merely enjoying sex is not sufficient to suggest that a defendant had cause to force himself on the victim). Admission of prior acts must be shown to sufficiently be similar to the charged acts to indicate they were likely done by the same person. In order for evidence to be admissible under this exception, the similarity must rise above the level of characteristics common to many incidents of the crime and must indicate a distinct pattern of conduct. The incident was not so distinctive as to constitute a "unique or distinct pattern easily attributable to one person." *State v. Beachum*, 96 N.M. 566, 568, 632 P.2d 1204, 1206 (Ct. App. 1981).

The firearms expert could not recall what kind of weapon Mr. Ramirez allegedly sought to purchase; he could not recall when exactly Mr. Ramirez came to his business; he did not keep a copy of the firearms application form which he claims he received from Mr. Ramirez. Although trial counsel sought to exclude the evidence, the trial court allowed the State to introduce it to support motive and premeditation. This was in violation of Rule 11-404(B) which provides that evidence of a defendant's prior acts is admissible to show proof of motive. Factually similar incidents cannot, alone, prove plan, particularly when the acts are several years apart and the State must be able to prove the act was somehow part of a bigger plan. *State v. Montoya*, 116 N.M. 72, 860 P.2d 202 (Ct. App. 1993).

Finally, whether Mr. Ramirez did or did not break his mother's windshield, the evidence was neither relevant nor probative to prove that Mr. Ramirez intended harm to his step-father. The evidence was admitted in violation of Rule 11-404(A) NMRA 2004 (providing that "[e]vidence of

a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). See *State v. Lucero*, 114 N.M. 489, 492, 840 P.2d 1255, 1258 (Ct. App. 1992); see also *State v. Alberts*, 80 N.M. 472, 474, 457 P.2d 991, 993 (Ct. App. 1969) (finding that if the sole purpose of evidence is to demonstrate bad character, reputation, or disposition, its prejudicial effect makes it inadmissible).

On the whole, the probative value of the evidence did not outweigh the prejudicial effect for which the State introduced it. As noted in *State v. Williams supra*, "[i]f evidence of prior acts is relevant and admissible for a purpose other than proving a defendant's propensity to commit a crime, the probative value of the evidence must outweigh its prejudicial effect". *Id. citing State v. Landers*, 115 N.M. 514, 517, 853 P.3d 1270, 1273 (1993); NMRA 1999, 11-403; *State v. Beachum*, 96 N.M. 566, 567-68, 632 P.2d 1204, 1205-06 (Ct. App. 1981).

Even when admitting prior bad acts evidence under a recognized exception, the trial court must still meet the requisites of 11-403. *State v. Wrighter*, 122 N.M. 200, 922 P.2d 582 (Ct. App. 1996). The trial court may admit evidence under NMRA 1999, Rule 11-404(B) if the probative value of the evidence outweighs any prejudicial effect. *State v. Landers*, 115 N.M. at 518, 853 P.3d at 1274.

There is no indication that the Court balanced the prejudicial effect of the evidence against its probative value to determine if "the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. See Rule 11-403, NMRA 2001. Even allowing that evidence of the defendant's prior history was admissible to establish context, See *Jones*, the trial court must engage in a balancing requirement of NMRA 1999, 11-403.

State v. Rojo, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829 ("Under Rule 11-403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."

Proof of other crimes has a tendency to prejudice the minds of the triers of fact and to predispose them to a belief in the accused's guilt. *See State v. Rowell*, 77 N.M. 124, 419 P.2d 966 (1966); *State v. Allen*, 91 N.M. 759, 581 P.2d 22 (Ct. App. 1978).

The real danger of admitting past conduct is that, if the jury believed the testimony, the jury would conclude that the Defendant acted in conformance therewith, and if he did so then, it is more likely he did so now. One cannot ignore the long tradition of courts and commentators expressing fear that jurors are too likely to give undue weight to evidence of a defendant's prior misconduct and perhaps even to convict the defendant solely because of a belief that the defendant is a bad person.

State v. Lamure, 115 N.M. 61, 71, 846 P.2d 1070, 1080 (Ct. App. 1992), *cert. denied*, 114 N.M. 720, 845 P.2d 814 (1993). Rule 404(B) is designed to prevent this kind of perception. *Id.* Testimony which amounts to evidence of a defendant's bad character, or disposition to commit the crime charged, when not offered for a legitimate purpose, is inadmissible and unfairly prejudicial. *State v. Rael*, 117 N.M. 539, 540, 873 P.2d 284, 286 (Ct. App. 1994).

Defendant submits that it was prejudicial error to admit evidence of prior uncharged conduct, *State v. Ross*, 88 N.M. 1, 536 P.2d 265 (Ct. App. 1975). Any references to other offenses may be probative, but its probative value is substantially outweighed by the prejudice to the Defendant. *State v. Hogervorst*, 90 N.M. 580, 566 P.2d 828 (Ct. App. 1977). Accordingly, Defendant's rights to fair trial and due process were violated. U.S. Const., amend V., XIV; N.M. Const., art. II § 18 (fair trial) and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend. V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

III. THE PETITIONER WAS LIKELY PREJUDICED AND DENIED HIS RIGHT TO A FAIR TRIAL WHEN HIS FALL WAS A DIRECT RESULT OF BEING SHACKLED AND HIS ATTORNEY DID NOT SEEK TO HAVE JURORS POLLED REGARDING WHETHER THEY SAW THE SHACKLES OR NOT.

A person in custody "coming into court for trial is entitled to make his appearance free of shackles or bonds." *State v. Holly*, 2009-NMSC-004, ¶ 41, 145 N.M. 513, 201 P.3d 844 (internal quotation marks and citation omitted); *see also* Rule 5-115(C) NMRA ("Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains or stun belts, a visible bullet proof vest or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury."). The record does not reflect that any order was issued by the trial court, until after the fall, whereby the shackles were removed for the remainder of the trial.

Petitioner recognizes that "a defendant's right to appear free of visible restraints is not absolute", *State v. Johnson*, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 229 P.3d 523, as "it must be balanced against the state's interest in maintaining security." *State v. Gomez*, 1971-NMCA-009, ¶¶ 2-7, 82 N.M. 333, 481 P.2d 412 (upholding the district court's denial of mistrial where jurors had viewed the defendant in handcuffs only as safety requirements demanded, "prior to the beginning of trial and during recess"). In this case, however, there were other adequate remedies to ensure the safety of the community and the integrity of security.

While a juror's "inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial," *See Holly*, 2009-NMSC-004, ¶ 41, in this case, there may have been 12 jurors who observed Mr. Ramirez in shackles. In *Holly*, a single juror may have seen the defendant in handcuffs during his escort back to detention. *Id.* ¶ 40. Rather than calling

attention to the incident by questioning the jurors, the district court chose to remedy the situation by repeating the general jury instructions to the jurors. *Id.* On appeal, our appellate court concluded that the incident did not constitute fundamental error because "it [was] unclear whether any exposure actually occurred, or if it did, that it was anything more than inadvertent or insignificant exposure." *Id.* ¶ 42. Here, there is nothing indicating that the Defense sought to question jurors regarding what they did/did not see when the defendant fell; rather, an assertion was made and the parties determined that likely none of the jurors saw anything. Another difference is that the defendant in Holly was wearing handcuffs. Shackles are arguably more egregious.

Given the uncertainty, the Defense should have demanded the jurors each be questioned individually and should have moved for a mistrial. In *State v. Mills*, 1980-NMCA-005, ¶ 15, 94 N.M. 17, 606 P.2d 1111, at least one juror viewed the defendant in handcuffs while a bailiff was escorting the defendant from the courtroom during a noon recess. The defendant moved for a mistrial, arguing that the incident deprived him of a fair trial. *Id.* The bailiff explained to the district court that he had waited with the defendant "for the time normally required for the departure of jurors, " and "that the view occurred because some jurors had used the restroom before departing." *Id.* ¶ 16. The district court held that the juror's observation of defendant in handcuffs was inadvertent and denied the defendant's motion for a mistrial, reasoning that "any impropriety resulting from the view was harmless" because the evidence at trial showed that the defendant was incarcerated. *Id.* ¶¶ 16-17. This case differs in three respects: the observation may have been made by all of the jurors; the defendant in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶ 3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶ 6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



LIANE E. KERR, Esq.

PO Box 10491

Albuquerque, NM 87184-0491

(505) 848-9190

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

I, the undersigned, being first duly sworn upon my oath, state that I am the Petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained therein are true and correct to the best of my knowledge, information, and belief.

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2018,
by _____.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the Respondent and the district attorney in the county in which the petition is filed by _____ (described manner of service), this 19th day of May, 2018

LIANE E. KERR, Esq.

in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

IV. MR. RAMIREZ ADDITIONALLY REQUESTS THE COURT CONSIDER ADDITIONAL ISSUES WHICH WERE INHERENT IN HIS TRIAL, BUT WHICH WERE NOT RAISED BY HIS APPELLATE ATTORNEY.

Undersigned provided Mr. Ramirez with a copy of the Petition and asked that he contact her with any suggestions/changes. No contact was made; however, in meeting with Mr. Ramirez, he made requests for additional arguments and they are therefore addressed briefly. See *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985). (counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit). Mr. Ramirez asks this Court to consider the following in the context of the entire trial:

1. **Sufficiency of the Evidence.** If the State does present evidence sufficient to support a finding of guilt beyond a reasonable doubt, the verdict violates the Due Process Clause. See *Jackson v. Virginia*, 443 U.S. 307, 317–18 (1979). Proof beyond a reasonable doubt is equivalent to proof "to a moral certainty," and refers to the highest degree of confidence with which an historical or physical fact can be known. *Victor v. Nebraska*, 511 U.S. 1, 11-12 (1994). See also *State v. Silva*, 2008-NMSC-051, ¶¶ 19-20, 144 N.M. 815, 192 P.3d 1192 (prosecution failed to present "any evidence, circumstantial or otherwise, of an overt act" by the defendant from which the jury could infer an intent to defendant), and *State v. Duran*, 2006-NMSC-035, ¶¶ 15-16, 140 N.M. 94, 140 P.3d

515.. 2008-NMSC-051, ¶ 19 (no evidence of any act by the defendant to destroy or hide evidence, with the only support for the tampering charge stemming from the fact that the evidence was not found).

2. **Prosecutorial Misconduct.** Without objection from trial counsel, the prosecutor claimed that Mr. Ramirez was a “menace to society”, a liar and during his closing argument. Prosecutorial misconduct reaches the level of fundamental error when it is egregious and so pervasive and prejudicial that the defendant was deprived of a fair trial and applies only when a defendant's conviction would shock the conscience if allowed to stand, or when an error is such that the fundamental integrity of the judicial process is implicated. *State v. Sosa*, 2009-NMSC-056, ¶ 35, 147 N.M. 351, 223 P.3d 348. Mr. Ramirez maintains that his conviction, when viewed against the prosecutor’s comments and conduct, would shock the conscience if allowed to stand.

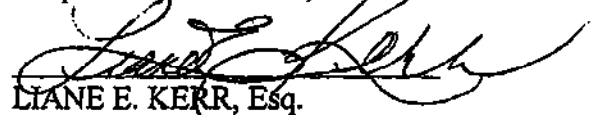
3. **Double jeopardy.** Mr. Ramirez believes that being twice charged with evidence tampering was tantamount to double jeopardy. No person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Imposing multiple punishments for tampering charges directed at the same item of evidence, violates the right to be free from double jeopardy. *State v. DeGraff*, 2006-NMSC-011, ¶ 34, 139 N.M. 211, 131 P.3d 61. However, Undersigned recognizes that distinct acts, separated by time and space, do not violate double jeopardy. *See State v. Quick*, 2009-NMSC-015, ¶ 25 (stating that “[d]istinctness may be established by determining whether the acts constituting the two offenses [were] . . . separated by time or space”).

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless

it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



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STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

JUN 20 2017

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

Erin E. [Signature]
Clerk District Court

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Continues

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF

CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN GERMAN FRANK

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2018 DEC 14 AM 10:57

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.


CLERK DISTRICT COURT

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, the Court having appointed the Law Office of the Public Defender to represent the Petitioner, Petitioner's Amended Petition for Writ of Habeas Corpus having been filed through Counsel on May 18, 2018, and the Court limiting its analysis to said Amended Petition, the State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, a Preliminary Disposition Hearing was held on October 29, 2018, Petitioner appeared telephonically with Petitioner's Counsel, Liane E. Kerr, Attorney at Law, the State appeared by and through Brian S. Stover, Chief Deputy District Attorney, this Court having heard argument and taking its decision under advisement, having reviewed the pleadings, researched the issues and the Court being fully advised and after due deliberation, FINDS;

1. Petitioner is represented by Liane E. Kerr, Attorney at Law. Through Counsel, Petitioner filed an Amended Petition for Writ of Habeas Corpus on May 18, 2018.

2. This Court notes that the New Mexico Supreme Court found that, at least to a portion of the issues raised by Petitioner, that Petitioner retained the ability to bring such a claim via a habeas corpus proceeding. *State v. Ramirez*, 2016 WL 7029226, ¶ 32.
3. This Court entered its Notice that the Court is Not Dismissing Any Portion of the Amended Petition at this Time and Order for State to Respond to Amended Petition for Writ of Habeas Corpus on June 15, 2018.
4. Per Rule 5-802(H)(3) NMRA, the Ninth Judicial District Attorney's Office was ordered to file a response to Petitioner's Amended Petition for Writ of Habeas Corpus within one-hundred and twenty (120) days from the date the Amended Petition for Writ of Habeas Corpus was filed (May 18, 2018).
5. The State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, 2018.
6. This matter was set for a Preliminary Disposition Hearing on October 29, 2018. This Court heard argument from both parties.
7. Following the Preliminary Disposition Hearing, this "court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall dispose of the petition without an evidentiary hearing, but may ask for briefs and/or oral arguments on legal issues." Rule 5-802(H)(4) NMRA. This Court does hereby rule that this matter is ripe for a decision. This Court finds that an evidentiary hearing is not required and no further briefs/argument are required.
8. A review of the file shows that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. The Honorable Judge Teddy Hartley presided over the trial in this matter.

9. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction in its decision, *State v. Ramirez*, 2016 WL 7029226. Said decision is incorporated by reference herein as though fully set forth.
10. In his Amended Petition, Petitioner asks this Court to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.
11. There are six issues raised in the Amended Petition: 1). Was Petitioner denied his Sixth Amendment right to effective assistance of counsel and his right of compulsory process when his trial attorney failed to call Dr. Maxann Schwartz, Ph.D (hereinafter referred to as "Dr. Schwartz") to testify at either the competency hearing or at trial?; 2). Were Petitioner's convictions obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced?; 3). Did it violate Defendant's due process rights when jurors observed him shackled during trial?; 4). Was there sufficient evidence to convict the Defendant?; 5). Was there prosecutorial misconduct during the trial in this matter?; and 6). Was Defendant's right to be free from double jeopardy violated when he was convicted of two counts of Tampering with Evidence?
12. The State's Response addressed all six issues and this Court heard argument related to all six issues at the Preliminary Hearing on October 29, 2018.
13. Petitioner's first argument is that he was denied effective assistance of counsel. This Court notes that Petitioner was originally represented by Brett Carter, Law Office of the Public Defender. Later, Petitioner was represented by Jesse Cosby, Attorney at Law.

14. The issue of ineffective assistance of counsel was directly considered by the Supreme Court. The Supreme Court ruled that "the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant's ability to bring such a claim via habeas corpus proceedings." *State v. Ramirez*, 2016 WL 7029226 ¶ 32.
15. Through the above described process related to Petitioner's Petition for Writ of Habeas Corpus, this Court finds that Petitioner has been given the opportunity to establish his record related to ineffective assistance of counsel.
16. Petitioner argues that it was ineffective assistance of counsel to not call Dr. Shwartz as a witness at a September 15, 2008 Competency Hearing. Leading up to that hearing, Mr. Carter filed a Notice of Filing to Determine Competency of the Defendant to Stand Trial on January 14, 2008. On March 10, 2018, Petitioner was evaluated by Dr. Schwartz who rendered an opinion that Petitioner was incompetent. The record reflects that Dr. Schwartz spent a matter of hours with the Petitioner during the course of one day. The parties then stipulated that Defendant was incompetent. An Order for Commitment to the New Mexico Behavioral Health Institute at Las Vegas for Treatment to Attain Competency to Stand Trial was entered on April 17, 2008. On June 5, 2008, Petitioner was admitted to the New Mexico Behavioral and Health Institute in Las Vegas, NM, for treatment to attain competency. Petitioner was treated by Dr. Joanne Burness, Ph.D (hereinafter referred to as Dr. Burness). On August 18, 2008, Dr. Burness rendered an opinion that Petitioner was competent to stand trial. The record reflects that Petitioner was at the New Mexico Behavioral and Health Institute from June 5, 2008 through

August 19, 2008 (75 days). A Competency Hearing was held on September 15, 2008. Petitioner was represented by Brett Carter. Dr. Burness testified at length about Petitioner's competency and the process that Petitioner went through to attain competency. The Court learned that Dr. Burness evaluated Petitioner and met with him on a number of occasions. She spent additional time evaluating and observing Petitioner. She also learned additional information from others regarding the Petitioner. Amongst other details related to Petitioner's competency, Dr. Burness testified that she believed Petitioner was malingering due to his actions, statements and numerous comments made by Petitioner about getting his charges dismissed once he was found to be incompetent. Petitioner was submitted to testing related specifically to malingering and testimony related to those tests was presented to the Court. Brett Carter cross examined Dr. Burness in great detail. Mr. Carter did not call Dr. Shwartz as a witness. Following the hearing, Petitioner was deemed competent by Judge Hartley. An Order finding Petitioner competent to stand trial was entered on September 16, 2008.

17. This Court notes that Mr. Carter would have been aware that, as of the date of the competency hearing, more than six (6) months had passed since Dr. Shwartz had met with the Petitioner for a matter of hours. Further, Mr. Carter would have been aware that, since Dr. Shwartz met with Petitioner, he had spent seventy-five (75) days at the New Mexico Behavioral and Health Institute being evaluated and observed by Dr. Burness and others. Dr. Burness had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc.
18. This Court finds that Mr. Carter's decision not call Dr. Shwartz as a witness was a strategic decision.

19. After an appeal related to the withdrawal of a plea agreement, Jesse Cosby entered his appearance on behalf of the Petitioner in August, 2011.
20. Competency continued to be an issue in this matter including a request by Mr. Cosby to have Petitioner's competency reevaluated in September 22, 2011. Petitioner received further forensic evaluation and treatment at the New Mexico Behavioral and Health Institute. By the time of trial, the parties had stipulated that Petitioner was competent and a Stipulated Order on Competency was filed on March 1, 2013.
21. Trial took place from October 7, 2013 through October 11, 2013. Testimony related to Petitioner's mental health was presented during trial. Petitioner argues that it was ineffective assistance of counsel for Mr. Cosby to not call Dr. Shwartz as a witness during the trial. Some of the factors that may have went into Defense Counsel's decision to not call Dr. Shwartz at trial are reflected on the record. As part of Petitioner's defense, Mr. Cosby elicited testimony from lay witnesses about Petitioner's mental health. In the afternoon on the fourth day of trial, the State began to prepare for up to two expert rebuttal witnesses, including Dr. Burness, to testify regarding Petitioner's mental health and specifically about Petitioner's malingering. Mr. Cosby argued that, if the State called said rebuttal witnesses, it would be necessary for him to call Dr. Shwartz to give surrebuttal testimony. After extensive argument, Defense Counsel began to maneuver in such a way that he would agree not to call Dr. Shwartz if the State did not call their rebuttal witnesses. In the end, Judge Hartley ruled that there would be no rebuttal witnesses and no instruction on competency. Judge Hartley even explained this decision to Petitioner, on the record, outside the presence of the jury.

22. This Court notes that Mr. Cosby would have been aware that, as of the first day of trial, it had been 2,037 days since Dr. Shwartz had met with the Petitioner. Further, Mr. Cosby would have been aware that, in the intervening time since Dr. Shwartz met with Petitioner, he had spent a considerable amount of time at the New Mexico Behavioral and Health Institute being evaluated and observed. Because of this, other mental health professionals had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc. The State argues that Dr. Shwartz's testimony would have been irrelevant.
23. This Court finds that Mr. Cosby's decision not to present Dr. Shwartz's testimony related to Petitioner's mental state at the time of the commission of the offense, malingering, etc. was a strategic decision.
24. This Court notes the record in this matter reflects a statement from Judge Hartley toward the end of the trial that Mr. Cosby had represented Petitioner expertly and that the handling of the mental health expert witnesses was done in a fair way.
25. As noted above, the decisions made by Mr. Carter and Mr. Cosby related to the testimony of Dr. Shwartz were strategic decisions. Counsel's decisions in these areas are trial tactics and counsel is afforded wide latitude as they represented the Petitioner.¹

¹ Courts generally give great deference to counsel's trial decisions, and mistakes of trial strategy or tactics do not render counsel's performance ineffective. The attorney has the basic responsibility for the conduct of the trial on behalf of his client, and he is given wide latitude in the discharge of this responsibility. Effective representation does not require that the defendant prevail or that his lawyer be infallible, and the courts are loathe to judge attorneys on the basis of hindsight. Thus, the mere fact that trial counsel took an action which another attorney might not have taken, or that trial counsel failed to take some action which might have proved advantageous, does not render him incompetent or ineffective. Generally, the attorney's performance will be held ineffective only when there is no tactical or strategic justification for his conduct of the trial. *Ineffective Assistance of Counsel*, 5 Am. Jur. Proof of Facts 2d 267 (Originally published in 1975; updated September, 2015).

26. A defendant is denied effective assistance of counsel only where it can be shown that defense counsel has failed to exercise the skill, judgment and diligence of a reasonably competent defense attorney. *State v. Orona*, 1982-NMSC-002. And the petitioner must also prove that the incompetent representation prejudiced the petitioner's case, rendering the trial court's results unreliable. *State v. Lopez*, 1996-NMSC-036. The main question is whether the allegedly incompetent representation prejudiced the case such that, but for counsel's error, there is a reasonable probability that the result of the conviction proceedings would have been different. *Lopez*, 1996-NMSC-036, ¶ 26. *State v. Baca*, 1997-NMSC-045 (overruled on other grounds).
27. This Court finds that Petitioner has failed to show that, but for counsel's "error," there is a reasonable probability that the result of the conviction proceedings would have been different. This Court finds that the Petitioner cannot show conduct which was not that of a reasonable, competent attorney. This Court is of the opinion that no prejudice to the Petitioner occurred in this regard. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
28. Petitioner's second issue is that the district court erred in admitting evidence of prior acts, in violation of Rule 11-402 NMRA. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 44-60. The Supreme Court ruled that Judge Hartley did not abuse his discretion in admitting the evidence of Defendant's prior acts. In his Amended Petition, Petitioner raises the same prior bad acts that were reviewed by the Supreme Court; with the addition of a claim related to the Petitioner attempting to purchase a firearm.

29. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to the claim related to the purchase of a firearm, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to Petitioner's prior bad acts, this issue cannot be collaterally attacked through a post-conviction Petition for Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

30. Petitioner's third issue is that he was prejudiced when members of the jury may have seen his leg restraints. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 39-43. The Supreme Court ruled that "Because it is unclear whether the jury saw the leg restraints and if they did, there is no evidence

that it was anything other than inadvertent or insignificant exposure, this case is not the exceptional type that goes to the violation of the foundation of presumption of innocence. Further, this case does not shock the conscience as Defendant's guilt is supported by substantial evidence in the record, including eyewitness testimony and evidence of Defendant's motive and a pattern of conduct toward Robledo . . . Accordingly, there was no fundamental error by the district court." *Id.*, ¶43

31. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to any additional times that the jury may have seen Petitioner's restraints, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to the jury potentially seeing Petitioner's leg restraints, this issue cannot be collaterally attacked through a post-conviction Petition for


Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

32. Petitioner's fourth argument is that there was insufficient evidence to convict him at trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. There was sufficient evidence presented to support Petitioner's convictions. After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
33. Petitioner's fifth argument is that there was prosecutorial misconduct during the trial in this matter. Petitioner raises comments made by the State about Petitioner being a liar and a menace to society. The Supreme Court, in *State v. Ramirez*, 2016 WL 7029226, ¶ 64, addressed a similar argument raised by Petitioner. The Supreme Court found that, "reviewing all of the comments made, in the context in which they were made, and taking into account those comments' potential effect on the jury, the questions were isolated and minor. Accordingly, the prosecutor's remarks did not deprive Defendant of a fair trial." This Court adopts the Supreme Court's finding. The State's remarks did not deprive the Defendant of a fair trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
34. Petitioner's sixth argument is that his convictions violate double jeopardy. Petitioner argues that it was error that he be convicted of two counts of tampering with evidence. The Double Jeopardy Clause provides that no one will be "twice put in jeopardy" for the same crime. Principles of double jeopardy protect against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6.

Petitioner alleges that he has received multiple punishments for the same offense. If conduct is separate and distinct, there is no violation of double jeopardy and the inquiry is at an end. *See Id.* ¶ 28. Evidence in this matter showed that one count of tampering with evidence was based upon Petitioner's actions related to a firearm and the other count of tampering was based upon Petitioner's actions related to clothing. This Court finds that each count of tampering with evidence was based upon a distinct act, separated by time and space, and involved different pieces evidence. Therefore, Petitioner's convictions were not premised on unitary conduct, and no double jeopardy violation occurred. *Swafford*, 1991-NMSC-043, ¶ 28. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

DECISION

After examining the Amended Petition, exhibits, prior proceedings, having heard argument from the parties, requiring no further hearing or briefing, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802 NMRA, the Petitioner's Amended Petition for Writ of Habeas Corpus filed on May 18, 2018 is DENIED.


HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

**NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO**

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY, NM
FILED IN MY OFFICE
2019 JUL 31 PM 12:55

ALBERT RAMIREZ,
Petitioner,
vs.

Drew Douglas Tatum
No. 2005-CR-2007-00434
CLERK DISTRICT COURT
(Hon. Drew Douglas Tatum)

GERMAN FRANCO, Warden,
STATE OF NEW MEXICO,
Respondent.

NOTICE OF 5-802(G)(1) INITIAL REVIEW

The Post-Conviction Habeas Unit Law Offices of the Public Defender hereby, provides notice to the Court and Counsel for Respondent of its review in accordance with Rule 5-802(G)(1), NMRA 2016:

- 1) The Ninth Judicial Court Clerk received for review the *Petition for Writ of Habeas Corpus* on June 24, 2019.
- 2) The Law Offices of the Public Defender (LOPD) was served with the *Petition for a Writ of Habeas Corpus* by the Court Clerk on June 24, 2019.
- 3) This Initial Review is timely filed by August 8, 2019.
- 4) As per, 5-802(G)(1) LOPD has reviewed the Petition and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.¹
- 5) Petitioner seeks appointment of a Habeas attorney to assist him in Habeas proceedings, an evidentiary hearing, and a "retrial."

¹ Under the Indigent Defense Act, Sec. 31-16-3 (B)(3) a person has the limited right to appointed counsel representation in post-conviction matters "unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense." (Emphasis supplied).

- 6) Petitioner raises a number of issues in his *pro se* Petition, including but not limited to:
 Whether Petitioner received ineffective assistance of counsel from his trial counsel, appellate counsel, and counsel assigned to his previous Habeas Petition. Whether the trial court abused its discretion in denying Petitioner's request and demand to fire or substitute his counsel. Whether introduction of Petitioner's prior uncharged acts at trial violated his due process rights. Whether statements made by the prosecuting attorney during closing arguments and cross examination of Petitioner constituted prosecutorial misconduct.
- 7) Petitioner has filed four previous *pro se* petitions for writ of habeas corpus on March 22, 2017, April 25, 2017, June 20, 2017, and July 17, 2017.
- 8) On May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr.
- 9) The Amended Petition raised six issues: 1. Was Petitioner denied his Sixth Amendment right to effective assistance of counsel and his right to compulsory process when his trial attorney failed to call Dr. Maxann Shwartz, Ph.D to testify at either a competency hearing or at trial? 2. Were Petitioner's convictions obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced? 3. Did it violate Defendant's due process rights when jurors observed him shackled during trial? 4. Was there sufficient evidence to convict the Defendant? 5. Was there prosecutorial misconduct during the trial in this matter?, and 6. Was Defendant's right to be free from double jeopardy violated when he was convicted of two counts of Tampering with Evidence?
- 10) The State filed a response to the Amended Petition on September 10, 2018.
- 11) A Preliminary Disposition Hearing was held on October 29, 2018.

12) On December 14, 2018, the Court issued an Order Denying Petitioner's Petition for Writ of Habeas Corpus.

13) In the instant *Petition*, Petitioner does not appear to assert any addition claims that he had not previously raised in prior petitions, and in fact, portions of the instant *Petition* appear to be photocopies of the previous pro se Petition, filed on June 20, 2017. Instead, Petitioner asserts that Ms. Kerr "rushed and failed to raise issues that were on my original petition." Petitioner notes that Ms. Kerr had requested a 60 day extension of time prior to filing the Amended Petition, and that the request for extension of time had been denied. Petitioner asserts that Ms. Kerr "failed to raise 3 or 4 issues" that Petitioner had raised in his previous pro se Petition, but it is unclear specifically which issues Petitioner believes have not been adequately addressed.

14) Rule 5-802(I) "Second and successive petitions: If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to: (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim."

15) Therefore pursuant to Rule 5-802(G)(1), the Post-Conviction Habeas Unit, Law Offices of the Public Defender, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense and defers to the Court pertaining to further appropriate action.

As per 5-802(H)(1) NMRA 2017, undersigned counsel submits this review for the limited purpose of said procedural rule and is not Counsel of Record on this matter.

Respectfully Submitted,



Matthias Swonger
Post-Conviction Habeas Unit
Law Offices of the Public Defender
505 Marquette Ave., NW Suite 120
Albuquerque, NM 87102
(505) 369-3581

I hereby certify that on July 30, 2019, a copy of this motion was transmitted to Counsel for Respondent and Petitioner.



Matthias Swonger, LOPD Habeas

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY, NM
FILED IN MY OFFICE
2019 AUG 12 PM 12:00


CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court upon the Petition for Writ of Habeas Corpus filed by the Petitioner on June 24, 2019, and the Court being fully advised, enters its sua sponte Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on June 24, 2019.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on July 31, 2019 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment."

5. LOPD determined that Petitioner's Petition is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
6. In their Notice, LOPD noted that this is the fifth pro se petition for Writ of Habeas Corpus filed by Petitioner. Petitioner's previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017 and July 17, 2017. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated herein as though fully set forth.
7. In their Notice, LOPD noted that, as to his current Petition, "Petitioner does not appear to assert any additional claims that he had not previously raised in prior petitions, and in fact, portions of the instant Petition appear to be photocopies of the previous pro se Petition, filed on June 20, 2017."
8. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
9. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
10. Rule 5-802(H) NMRA states:

H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:

- (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
- (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

11. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on June 24, 2019, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.

12. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed June 24, 2019, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of law or fact. This Court finds that the ends of justice would not be served by rehearing the claim.

13. Additionally, this Court finds that any claims related to ineffective assistance of habeas counsel are not supported by fact or the record in this matter. Petitioner is not entitled to relief on such claims.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed June 24, 2019 is DISMISSED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

12-501

ORIGINAL

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

S-1-SC-37887

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

SUPREME COURT OF NEW MEXICO
FILED

Currentness

SEP - 3 2019

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO J. RAMIREZ

Defendant-Petitioner,

S.Ct. No.

(leave blank; court will assign)

vs.

Dwayne Santistevan

District Ct. No.

(Name of Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF NEW MEXICO

Alberto Ramirez

Defendant

Petitioner pro se

Alberto Ramirez

6900 W. Millen dr

Hobbs NM 88244

EXHIBIT

FF

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

6900. W Miller
(address information)
Hobbs NM 88249

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

Albert Ramirez v. Duwayne Santisicuan
(your name v. Warden's name), District Court No. _____ filed on

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

ITS JUDICIAL DISCRETION IN DENYING
PETITIONER AN INQUIRY INTO HIS
dispute and dissatisfaction and
irreconcilable CONFLICT OF INTEREST
with HIS trial counsel.

SEE HABEAS petition

Alberto J. Ramirez v Duwayne Santisicuan

See. Attach pages 3

The Facts upon my claims.

It makes sense to me.

PAGE 3

PAGE 2

3. STATE CONCISELY THE FACTS UPON WHICH THE CONF. NEW PERSON BASES THE CLAIM.

THE JUDGE IGNORED PETITIONERS REQUESTS FOR SUBSTITUTION OF COUNSEL AND DEMANDS TO FIRE HIS ATTORNEY. TWO WEEKS BEFORE TRIAL, TWICE IN TRIAL.

PETITIONER EXPRESSED DISATISFACTION, COMPLAINED OF COUNSEL NOT FILING MOTIONS FOR CHANGE OF VENUE.

WHEN THERE WAS INACCURATE EVIDENCE OF MR RAMIREZ

ATTACKING THE VICTIM BEFORE INCIDENT. ALSO OTHER

HIGHLY PREJUDICIAL INADMISSIBLE EVIDENCE. OF MR RAMIREZ

BREAKING WINDOWS, AND ASSAULTING BATTERY OFFICERS IN

SMALL COMMUNITY OF CLOVIS, PETITIONER ALSO

COMPLAINED ABOUT BEING CONFUSED OF PROCEDURES

AND COUNSEL NOT EXPLAINING PROCEDURES. MR. RAMIREZ

PETITIONER COMPLAINED OF A SERIOUS BREAKDOWN

IN COMMUNICATION BETWEEN COUNSEL AND PETITIONER.

PETITIONER TRIED TO COMMUNICATE TO COUNSEL

TO NO AVAIL. COUNSEL FAILED TO ADVISE PETITIONER

OF PLEA DEAL OR EXPLAIN THE MAXIMUM AND MINIMUM

TIME FACING. COUNSEL FAILED TO BE RESPECTFUL AND

RESPONSIBLE AND FULFILL HIS DUTY OF LOYALTY TO

ADVOCATE TO PETITIONER BY NOT CALLING OTHER

WITNESS PETITIONER WANTED CALLED AS WITNESSES.

COUNSEL THREATENED PETITIONER THAT IF

HE DID NOT TAKE PLEA AND KEEP ON INSISTING

TO GO TO TRIAL HE WOULD NOT PROVIDE

EFFECTIVE ASSISTANCE OF COUNSEL.

PETITIONER TOLD COUNSEL AND PSYCHIATRIST AND FAMILY OF BEING SEXUALLY ABUSED BY VICTIM AS A YOUNG CHILD.

COUNSEL FAILED TO ALERT THE COURT THAT PETITIONER TOLD HIM HE FELL DOWN JULY SAW HIS SHACKLES AND HE FELL DOWN. AND THAT SHERIFF DOZERTY MANIPULATED THE THREATENED PETITIONER TO SAY HE DID NOT FALL DOWN AND THAT THE JURY DID NOT SEE HIS SHACKLES.

PETITIONER ASKED COUNSEL TO REQUEST A MISRIAL AND TO PUT THIS ON RECORD.

COUNSEL REFUSED TO DO IT.

COUNSEL FAILED TO CALL WITNESS'S

PRICILLA LOPEZ NIBOR EYE WITNESS, AND

RICKY JARAMILLO EYE WITNESS TO HELP

PROVE I WAS THE ONE BEING CHASED

AND I SHOT IN FEAR FOR MY LIFE I DID

NOT CHASE VICTIM.

COUNSEL FAILED TO INVESTIGATE FAMILY HISTORY OF MENTAL ILLNESS IN FAMILY - AND TO DEFENSE.

PETITIONER CALLED COUNSEL AND WROTE TO HIM COUNSEL WOULD NOT SPEAK TO ME AT ALL AND IGNORED ME TO BUSY.

COUNSEL WOULD NOT DISCUSS TRIAL STRATEGY OR ANYTHING.

COUNSEL TOLD PETITIONER HE HOPED HE GOT LIFE.

PETITIONER TRIED TO SPEAK ON RECORD TWICE TO PUT THIS ON RECORD BUT WAS DENIED.

PETITIONER REQUEST THAT THE COURT GRANT HIM AN ATTORNEY TO ASSIST HIM IN HABEAS PROCEEDINGS AND TO HOLD AN EVIDENTIARY HEARING ON INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE UNFORTUNATELY ALL FACTS AND ALLEGATIONS ARE NOT ON THE RECORD TO PROPERLY DECIDE CASE.

COUNSEL PROMISED PETITIONER IF HE TESTIFIED PETITIONER WOULD BE ABLE TO TESTIFY OF BEING SEXUALLY ABUSED BY VICTIM AND NEIGHBOR EYEWITNESS SENSARZ

COUNSEL FAILED TO CALL FATHER JOSE RAMIREZ WHO WOUND OF TESTIFIED VICTIM ATTACKED HIM TWICE AND WAS AGGRESSIVE, ALSO BROTHER ISRAEL RAMIREZ WAS ATTACKED BY VICTIM TO SHOW AGGRESSION.

COUNSEL KNEW I HAD BEEN DRINKING ALCOHOL DAY OF INCIDENT AND TOLD ME TO NOT TALK OF BEING DRUNK IT WOULD NOT HELP.

PETITIONER HAD SEVERAL WITNESSES HE WISHED TO CALL, TO PRESENT IN SUPPORT OF HIS DEFENSE AUNT, SISTER, BROTHERS, FRIENDS, DOCTORS WHO TREATED HIM AFTER ACCIDENT.

COUNSEL FAILED TO ALERT COURT TO IMPORTANT FACTS IN CRIMINAL CASE. PETITIONER WAS IN AN ACCIDENT IN 2007 WHICH BEGAN TAKING ANTIDEPRESSANT MEDICATION, & OTHER MEDICATION THIS BECAME SEVERE DEPRESSION, HE WAS UNABLE TO WALK ONLY WITH CRUTCHES, SUFFERED DELUSIONS HALLUCINATIONS. PTSD.

STAKE CONSISTED THE FACTS UPON WHICH THE CONFINED PERSON
BASES THE CLAIM.

* THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER
REQUEST, DEMANDS TO FIRE OR SUBSTITUTE COUNSEL

- ① THERE WAS NO INQUIRY BY JUDGE
- ② NO CONSIDERATION OF LENGTH OF DELAY
- ③ THE EXTENT OF CONFLICT CREATED

OTHER FACTS

* WHETHER I BEYOND PETITIONER'S CRIMINAL CONVICTIONS
WAS OBTAINED IN VIOLATION OF HIS STATE AND FEDERAL RIGHT
TO DUE PROCESS AND A FAIR TRIAL, WHEN PRIOR CHARGES
AND UNCHARGED ACTS WERE INTRODUCED WITHOUT A
BALANCING ANALYSIS UNDER RULE 11-404.B?

EVIDENCE IF HEAD BUTTER A POLICE OFFICER INCOMPETENT
EVIDENCE OF LETTER EXIST NO WRITINGS OF
STRONG PEOPLE TO PROVE ELEMENT OF PERMEATION

* FACTS

PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT
SAY MR REMIREZ PETITIONER IS A MENACE TO SOCIETY
AND A LIAR NO EVIDENCE TO PROVE THIS IS
PROSECUTORIAL MISCONDUCT.

* ALSO CLOSING ARGUMENT EVIDENCE ON PRIOR BAD ACTS
ON INADMISSIBLE EVIDENCE OF BREAKING WINDOWS, BEAT
BUT BUTTER ON OFFICERS, AND LONG LEGAL RESEARCH IN
CLOSING ARGUMENT AFTER JUDGE TOLD HIM
TO NOT USE THIS EVIDENCE.

Prosecutor used prior bad acts to show character of propensity and it amounts to prosecutorial misconduct

* Also prosecutor cross examination on petitioner doing legal research to beat his charges. then asked right after you did legal research to get the jury to buy this. ITS A COMMENT ON PETITIONER'S RIGHT TO ASSIST IN ASSIST.

OTHER FACTS OF CASE

* Habeas counsel failed to discuss issues petitioner wanted added, AND ARGUED PROPERLY, 1st Habeas lawyer Amanda Stephenson Refused to Request trial transcript of closing Argument Had case 6 months would not Request or file anything or discuss case with petitioner, 2nd petitioner Liaw Kerr was substituted because of conflict of interest.

Habeas Attorney Rushed Petition because she was denied 60 day extension Request and did not meet fully with me. was too busy to talk on phone.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO __, NM R CR Form 9-702

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

FIRST DEGREE MURDER Life eligible parole
Tampering w/ Evidence 2 Counts 3rd degree

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

No. ~~2000~~ S-1-SC-34576 8.12.17

No. S-1-SC-36599 8.11.17

No. S-SC-37501 2-5-19

3. Tell the story of what happened in your court case:

I asked to substitute counsel 2 weeks before trial, during trial expressed dissatisfaction. NO INQUIRY INTO COMPLAINTS. Promised IF I did testify I could talk of Morstan's (B) INADMISSIBLE evidence used A note saying I'd kill in the future NO PROOF
WESTLAW © 2017 Thomson Reuters. No claim to original U.S. Government Works. I wrote it.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

JURY SAW ME SHACKLED AND I FELT I TOLD TRIAL
 COUNSEL TO NO AVAIL. D. PROSECUTORIAL MISCONDUCT
 IN CROSS EXAMINATION ASKING ABOUT LEGAL RESEARCH TWO
 QUESTIONS. AND IN CLOSING ARGUMENT USED INADMISSIBLE
 EVIDENCE BATTERY ON A OFFICER A NOTE SAYING OF
 KILLING PEOPLE. E. INEFFECTIVE ASSISTANCE ON HABEAS
 BY HABEAS ATTORNEY I HAVE E. KERR AND

**BASIS FOR GRANTING THIS PETITION FOR
 WRIT OF CERTIORARI TO THE DISTRICT COURT**

(Petition filed without taking to me first.) AMANDA STEPHANSON.

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT I: A. INEFFECTIVE ASSISTANCE OF TRIAL

COUNSEL FAILED AND TRIAL COURT ABUSED ITS
 DISCRETION IN DENYING PETITIONER AN INQUIRY
 INTO HIS DISSATISFACTION CONFLICT OF INTEREST WITH
 HIS ATTORNEY. CASE → U.S. V. ADELZO-GONZALES
 CITE AS 268 F.3d 772 (9th Cir 2001)
 WILSON V. MINITZES CITE AS 741 F.2d 275 (1985)
 FRAZER V. U.S. CITE AS 18 F.3d 778 (9th Cir 1994)

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

B. prior bad acts Facts
POINT 2:

The prosecutor used evidence it was inadmissible
Battery on a Peace Officer in cross exam and closing
argument. Also used cross examination in asking
question during legal research, comment on both admission right
also used note in closing argument about shooting
people and said I am a menace to society and
liar NO evidence to support it.

C. Shackles Error.
POINT 3:

The jury SEEN ME shackled and fall down. I
told my lawyer to tell court to NO shackles. SEE -
State V. Brawley Cite. as. 137 A.3d. 757
CONN. 2016. it said court ruled to let
defendant to show jury did in fact see
him in shackles. Federal right to fair trial

(Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

d. Prosecutorial Misconduct
IN CROSS Examination asked about

me headbutting an OFFICER, then
asked me about doing legal research
on how to beat my charges twice.
And IN closing argument that were
INadmissible IRRELEVANT Evidence on
Prior bad acts about a letter exhibit
110 Saying I'd Kill in the Future and
about breaking Victims windows and called
me a Menace to Society and a liar No proof.
Washington v. HoFbauer. Cite as 228 F.3d. 689
6th Cir 2000
U.S. v. Francis Cite as 170 F.3d 546 (6th Cir)
(1999)
Start v. J.d. by Rider. Cite as 228 F.3d. 709
6th Cir 2000

Other cases in those cases are
Cross Exam - Relevant to my case
- and closing argument comments on Prior bad
acts INadmissible amounted to Prosecutorial
Misconduct

E. INEFFECTIVE ASSISTANT OF HABEAS COUNSEL.

MS. AMANDA M. STEPHENSON
AND MS. LIONE. E. KERR.

- I ASKED BOTH TO GET TRIAL CLOSING ARGUMENT transcript on paper and INK BUT NO. I WAS DENIED IGNORED BY THEM.
- I ASKED THEM TO FILE HABEAS ON DISTRICT COURT ESTD IN ITS JUDICIAL DISCRETION IN DENYING PETITIONER AN INQUIRY INTO HIS DISPUTE AND DISSATISFACTION AND IRRECONCILABLE CONFLICT OF INTEREST WITH COUNSEL.
- CLOSING ARGUMENT INADMISSIBLE EVIDENCE ABOUT LETTERS EXH. 110 TALKING OF SHOOTING PEOPLE
- CROSS EXAMINATION ON HEARSAY A OFFICER AND DOING LEGAL RESEARCH.
- CLOSING ARGUMENT CANNOT MIXED TO SOCIETY AND A LIE NO PROOF TO USE THIS EVIDENCE INADMISSIBLE NO OBJECTION FROM LAWYER.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NMRA CR Form 9-702

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other)

Grant evidentiary grant an attorney to assist in proceeding,

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

IT WAS LOST STATES response and district courts order on transport and in segregation. SIR

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Alberto Ramirez 69597

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 26 day of 2019.

Alberto Ramirez 69597

Defendant-Petitioner, pro se

Credits

[Adopted effective Dec. 31, 2014.]

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

2019 AUG 12 PM 12:00

[Signature]
CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court upon the Petition for Writ of Habeas Corpus filed by the Petitioner on June 24, 2019, and the Court being fully advised, enters its sua sponte Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on June 24, 2019.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on July 31, 2019 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment."

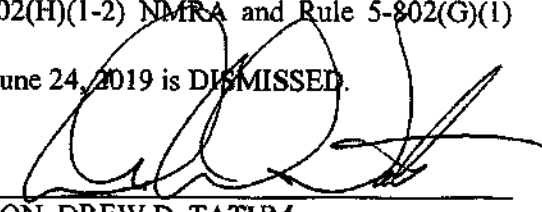
5. LOPD determined that Petitioner's Petition is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
6. In their Notice, LOPD noted that this is the fifth pro se petition for Writ of Habeas Corpus filed by Petitioner. Petitioner's previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017 and July 17, 2017. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated herein as though fully set forth.
7. In their Notice, LOPD noted that, as to his current Petition, "Petitioner does not appear to assert any additional claims that he had not previously raised in prior petitions, and in fact, portions of the instant Petition appear to be photocopies of the previous pro se Petition, filed on June 20, 2017."
8. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
9. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
10. Rule 5-802(H) NMRA states:
 - H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:
 - (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
 - (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

11. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on June 24, 2019, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
12. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed June 24, 2019, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of law or fact. This Court finds that the ends of justice would not be served by rehearing the claim.
13. Additionally, this Court finds that any claims related to ineffective assistance of habeas counsel are not supported by fact or the record in this matter. Petitioner is not entitled to relief on such claims.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed June 24, 2019 is DISMISSED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

S-I-SC-37887

Exhibits

2017

FIRST HABEAS JUNE 20th

granted HABEAS lawyer

But HABEAS failed to

raise ISSUES and grounds

so I send NEW HABEAS

Asking the COURT for a

NEW ATTORNEY to

ASSIST IN HABEAS

proceedings

1st ORIGINAL petition argued

I had CONFLICT OF

INTEREST WITH TRIAL

COUNSEL

SUPREME COURT OF NEW MEXICO
FILED

SEP - 3 2019

TO: NEW MEXICO SUPREME COURT
CLERK THE 9th JUDICIAL
DISTRICT COURT clerk made
A mistake the petition is
the new one by Alberto Ramirez
V. Dwayne Santistevan. at the
leacounty correctional Facility.
I Don't have money to make copies
or send it.

Please let the courts + judges know
know Shelly burger Filed stamped 6-24-19
10.am. 38 minutes it was wrong. Thank
you for your time. God Bless.

Please
respond
she got it
confused.

Sincerely,
Alberto
Ramirez
6-22-19

COURT LETTER
9th District Court
ATTENTION COURT CLERK
ADDRESS.

6-7-19

IN RE: ALBERTO J. RAMIREZ

U.S. NEW MEXICO CR# _____

Dear COURT CLERK

ENCLOSED

~~Enclosed~~ please find 2 COPIES OF
my HABEAS CORPUS PETITION. ACCORDING TO
NEW RULES 5-802 HABEAS CORPUS, UNDER
6(1) ... UPON RECEIPT OF THE PETITION.
THE CLERK OF THE COURT SHALL IMMEDIATELY
FORWARD. A FILE-STAMPED COPY OF THE
PETITION AND ANY ATTACHMENTS TO THE
DISTRICT ATTORNEY AND TO THE PUBLIC
DEFENDER DEPARTMENT POST-CONVICTION UNIT.

~~Enclosed~~
Mailing copies of the petition in accordance
with subparagraph and with a completed
CERTIFICATE OF MAILING SHALL CONSTITUTE
SERVICE ON THE RESPONDENT BY THE CLERK
OF THE COURT IN ACCORDANCE WITH RULE - 5-103,
5-103.1, OR 5-103.2. NMRA

please send me back a COPY FILED
STAMPED BECAUSE UNDER NEW RULES JURORS AND
DEFENDANTS THEREFORE INDIGENT.

Sincerely
Alberto Jose
RAMIREZ

19 Clerk did not send me a copy
02 File Proper. Habeas New one
by Warden Suttstien
022

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED

2019 JUN 24 AM 10:58

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

[Signature]
CLERK DISTRICT COURT

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Complainant

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF CURRY

IN THE DISTRICT COURT

For Official Use Only

No. D-0006 CR 020 07 00 434

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v. WARDEN. Dwayne Switstuck

WARDEN GERMAN FRANK

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

ALBERT JOSE

1. RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at LEG. COUNTY CO. PR. (name of facility and county of detention) by DWAYNE SANTESTEVAN (name and title of person having custody).

2. This petition

[W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

[W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

ISSUE 1:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, APPEAL COUNSEL, AND HABEAS COUNSEL ON AMENDED PETITION.

ISSUE 2. DISTRICT COURT ERRED IN ITS JUDICIAL DISCRETION IN DENYING PETITIONER MR RAMIREZ AN INQUIRY INTO HIS DISPUTE AND IRRECONCILABLE CONFLICT WITH PETITIONERS' COUNSEL, PLEASE SEE ATTACH PAGE TO EXPLAIN FACTS THANK YOU.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

I DONT KNOW WHAT THIS MEANS. ILL TRY MY BEST.

I BELIEVE ITS MY CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND
TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, ON APPEAL, AND
HABEAS petition, SEE ATTACH PAGES TO EXPLAIN FACTS AND
EVIDENCE AND EXHIBITS. AND OTHER GROUNDS AND ^{basis of} CLAIMS.

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not: NO and

YES SOME WHERE, BUT HABEAS ATTORNEY WAS RUSHED AND FAILED
TO RAISE ISSUES THAT WERE ON MY ORIGINAL petition.
HABEAS ATTORNEY REQUESTED A 60 DAY EXTENSION AND WAS
DENIED. SHE DID NOT FULLY MEET WITH PETITIONER.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not: NO grounds HAVE NOT BEEN RAISED AND

YES, SOME NOT BECAUSE HABEAS ATTORNEY WAS RUSHED
AND FAILED TO RAISE 3 OR 4 ISSUES ON MY ORIGINAL petition
AND FAILED TO ATTACH DOCUMENTS. HABEAS LAWYER REQUESTED
60 day extension BUT WAS DENIED.

7. Briefly describe the relief requested:

WANT AN EVIDENTIARY HEARING, APPOINTED HABEAS ATTORNEY TO
ASSIST IN HABEAS PROCEEDINGS, A RETRIAL.

Form 9-701 petition For writ of HABEAS CORPUS
NM, R, CR Form 9-701

page 3
of

(4)

State concisely the Grounds
and law, or OTHER legal authorities
on which the CONFINED PERSON
BASES THE CLAIM:

See attach PAPERS.

FACTS + TRANSCRIPTS + Record +
 NEWS PAPER CLIPPINGS + Some discovery
 TO PROVE CLAIMS AND FACTS OF
Grounds And ISSUES.

2① INEFFECTIVE ASSISTANCE OF TRIAL
 COUNSEL. CONFLICT OF INTEREST OR IRRECONCILABLE
 22 CONFLICT

● WHETHER THE TRIAL COURT ABUSED
 ITS DISCRETION IN DENYING MR
 RAMIREZ REQUEST AND DEMAND TO
 FIRE OR SUBSTITUTE OF COUNSEL.

① THERE WAS NO INQUIRY ② NO
 CONSIDERATION OF LENGTH OF DELAY TO
 SUBSTITUTE COUNSEL. ③ THE EXTENT
 OF CONFLICT CREATED.

b. WHETHER PETITIONER'S CRIMINAL
 CONVICTIONS WERE OBTAINED IN VIOLATION
 OF HIS STATE AND FEDERAL RIGHT
 TO DUE PROCESS AND A FAIR TRIAL
 WHEN PRIOR UNCHARGED ACTS WERE
 INTRODUCED ABSENT A BALANCING
 ANALYSIS UNDER RULE 11-404.B?

● C SHACKLES SEEN BY JURY AND PETITIONER
 Fall down. SEE. STATE V. BRAWLEY
 Cite as 137A.3d.757 Conn. 2016.

D. THE COURT Abused its discretion
IN NOT declaring A mistrial ON
COMMENTS OF PROSECUTORIAL MISCONDUCT
IN CROSS EXAMINATION, AND
DURING CLOSING ARGUMENTS.

See exhibits. documents need transcript
also.

E.

Things on record

MR RAMIREZ PETITIONER
WAS DENIED EFFECTIVE
ASSISTANCE OF HABEAS AMENDED
PETITION COUNSEL.

SEE EXHIBITS. FACTS. documents.

F. THE ERRORS all TOGETHER added up
TO CUMULATIVE ERROR AND denied
petitioner OF A fair trial
AND denial OF due process.

SEE EXHIBITS, documents
Records NOTES.

TO PROVE claims,

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I would like to be able to properly present
issues and grounds to prove my claims.

Please Thank you.

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

STATE OF NEW MEXICO VS. ALBERTO J. RAMIREZ

(b) docket number:

D-0905 - CR - 2007 - 00434

(c) name of judge:

TEDDY L. HARTLEY

(d) name and location of the court in which the proceeding was held:

700. N. MAIN ST CLOVIS NM 88101

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE R. COSBY
P.O. Box 3330 ROSWELL NM 88201

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial district court AND NEW MEXICO SUPREME COURT
OF APPEALS.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(b) The case name and docket number for each appeal:

STATE OF NEW MEXICO VS. ALBERTO JOSE RAMIREZ

No - S - 1 - SC - 34576

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed AUGUST 2014 DON'T KNOW EXACT DAY

Decided december 1st 2016

(d) A summary of the grounds upon which each appeal was based:

Competency reevaluation, ineffective assistance of counsel

Improper comments on silence, prosecutorial misconduct,

prior bad acts, shackles error, judge failed to grant mistrial due to prosecutorial misconduct

(e) The result of each appeal:

Denial Affirmed

(f) The name and address of the attorney on appeal:

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

STEVEN J. FORSBERG

505 MARQUETTE N.W 87102

505-796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

.....

.....

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

HABEAS petition, petition OF Certiorari denied now
I come back with NEW HABEAS CORPUS petition ISSUED.

(b) The name and date of each case:

STATE OF NEW MEXICO VS. ALBERTO JOSE RAMIREZ

(c) the docket number:

NO- D- 0905- CR- 2007 - 00434

Form 9-701 petition. For writ of
Habeas corpus, NM R. Cr.
Form 9-701

See Page 8.(F)

F. N.M. Supreme court. Ineffective assistance of
counsel, improper commentary on right to remain silent
the jury saw him in shackles and fall. Improper
introduction on prior bad acts. Judge refused to
declare a mistrial due to prosecutorial misconduct
on amended petition - whether was denied both
amended right to effective assistance of counsel
and compulsory process

6. A disposition HEARING
WAS SCHEDULED BUT HABEAS
DENIED.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

9th Judicial district court of Alamosa NM 88101

(e) the result of each proceeding. (Attach a copy of each decision.)

Denied I DON'T BELIEVE I HAVE ONE. SORRY.

(f) The issues raised in each proceeding:

Ineffective assistance of counsel, prior bad acts, prosecutorial misconduct, Incompetency reevaluation, double jeopardy temporary ^{with} sentence

(g) State whether a hearing was held in connection with each of these proceedings:

ON HABEAS Amended petition while represented by HABEAS COUNSEL
a DISPOSITION HEARING.

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

IN APPEAL STEVEN J. FOLSBELG 55 MARAUCETZ NW 87102 ALBUQUERQUE NM
ON HABEAS petition LINDA E. KERR PO. BOX 10491 ALBUQUERQUE NM 87184-0491

19. Do you seek the appointment of counsel to represent you?²

✓ Yes

___ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF Curry Lea

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On 6/5, 2019 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th judicial district court
___ Court (name of court)

Alouis (city), New Mexico, 88101 (zip code).

Alberto J. Ramirez
(
Signature

Alberto J. Ramirez
(
Address

6900. B W. MILLER DR. Hobbs, N.M 88244

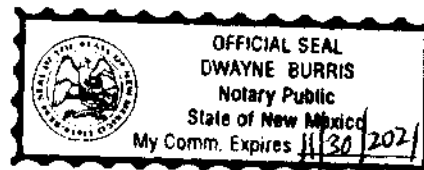
PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 5th day of June, 2019 by

(Name of petitioner) Alberto J. Ramirez

Dwayne Burris

Notary Public



My Commission Expires: 11/30/2021

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MW (describe manner of service), this 11th day of June, 2019.

(
Signature of petitioner

) Alberto J. Ramirez

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

- 1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.
- 2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through August 1, 2017.

INEFFECTIVE
ASSISTANCE
OF TRIAL
COUNSEL
~~A~~

THIS PAGE

INTENTIONALLY

LEFT

BLANK

Ground A. and A2 TOGETHER PAGE 1

TRIAL COUNSEL TOLD MR. RAMIREZ THAT HE WOULD NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL IF I MR. RAMIREZ CONTINUED TO INSIST ON GOING TO TRIAL AND WOULD NOT TAKE THE PLEA. ALSO TRIAL COUNSEL DID NOT EXPLAIN THE MINIMUM AND MAXIMUM TIME MR. RAMIREZ WAS FACING, MR. RAMIREZ ALSO TRIED TO FIRE HIS ATTORNEY ONCE IN FRONT OF THE JURY IN MIDDLE OF TRIAL.

COMPLETE BREAKDOWN IN COMMUNICATION. THE DISTRICT COURT ABUSED ITS DISCRETION IN THE FACT THE JUDGE NEVER QUESTIONED THE TRIAL ATTORNEY OR MR. RAMIREZ PRIVATELY NOR IN DEPTH OF TO THE DISSATISFACTION AND OF THE COMPLAINANTS AND REQUEST TO CHANGE SUBSTITUTE COUNSEL.

ALSO. JUDGE COURT DID NOT INQUIRE INTO MR. RAMIREZ REQUEST.

Ground 2

page 12

The Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The fact that the jury pool was ready for selection does not automatically outweigh Mr. Ramirez's 6th Amendment right.

The judge ignored the problems between Mr. Ramirez and his attorney, commenting he was being well represented and would not substitute counsel.

- ①. UNDER STANDARDS FOR DENYING A MOTION TO SUBSTITUTE COUNSEL. THE DISTRICT COURT ERRED. I WANT THE COURT TO REVIEW THE DENIAL OF A MOTION OR REQUEST FOR SUBSTITUTION OF COUNSEL FOR ABUSE OF DISCRETION.

TURNPAGE →

Ground A

PAGE 3

SEE UNITED STATES V. CORONA - GARCIA,
210 ~~210~~ F.3d 973, 976 (9th Cir
2000), cert. denied, 531 U.S. 898
121 S.Ct. 231, 148 L.E.d. 2d. 165
(2000).

IN Reviewing a denial OF
Substitution OF COUNSEL.

- ① THE TIMELINESS OF THE MOTION
- ② THE ADEQUACY OF THE TRIAL
COURTS INQUIRY
- ③ THE EXTENT OF CONFLICT CREATED
IN MR. RAMIREZ CASE THE JUDGE
Failed to adequately balance MR
RAMIREZ 6th ADMINISTRATIVE RIGHTS AGAINST
ANY INCONVENIENCE AND DELAY
FROM GRANTING A CONTINUANCE.

ALSO, I BRING THIS AS NOT A
LAWYER.

ISSUE MAYBE. IRRECONCILABLE CONFLICT
OR CONFLICT OF INTEREST
AND ABUSE OF DISCRETION.

Thank you →

Ground A

PAGE 4

SEE . U.S. ADELZO - GONZALEZ
Cite as 208 F.3d. 772
(9th Cir 2001)

- ABSENT Compelling purpose. It is violation of Sixth Amendment to deny motion to substitute counsel. It is error that must be reversed, regardless of whether prejudicial results.

MR. Ramirez States. trial counsel used bad language threatened to provide effective assistance of counsel if MR. Ramirez insisted to go to trial, instead of taking plea.

TRIAL COUNSEL CALLED MR. RAMIREZ A
A LYING STUPID MEXICAN 'SON
OF A BITCH. and Hoped MR.
RAMIREZ Gets life.

page 5 Ground 2

THIS IS EXTRA INFORMATION
THAT NEEDS TO BE READ FOR THIS
PETITION.

TRIAL COUNSEL DENIED A FAILED TO
PROVIDE EFFECTIVE ASSISTANCE OF
COUNSEL.

TWO WEEKS BEFORE TRIAL MR.
RAMIREZ REQUESTED SUBSTITUTE OF
COUNSEL AND EXPRESSED
DISSATISFACTION and that there
WAS A BREAKDOWN IN COMMUNICATION

SEE CASE TRUNG TRAN NGUYEN
V. UNITED STATES OF AMERICA
NO. 00-10272

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

Submitted Dec. 12, 2000

Filed August 28th 2001

TURN PAGE 7

page 8. Counsel 2.

Under the standards for denying a motion to substitute counsel the district court erred.

United States v. Corona - Garcia, 210 F.3d, 973, 976 (9th Cir 2000). Cert. denied, 531 U.S. 898, 121 S.Ct. 731, 148 L.Ed. 2d. 165. 2000.

In denying substitution of counsel the court should of considered

- ① The timeliness of the motion
- ② The adequacy of the trial courts inquiry; and the extent of conflict created.

With regard to timeliness, as mentioned above the district judge failed to adequately balance Mr. Ramirez's 6th Amendment rights and inconvenience and delay from granting the continuance. Moore, 159, F.3d. at 1166. In Mr. Ramirez case the District Court judge did not even appear to consider the length of delay that would have been

IT WAS INEFFECTIVE ASSISTANCE
FOR TRIAL ATTORNEY TO NOT OBJECT
TO CLOSING ARGUMENT INADMISSIBLE
EVIDENCE PRESENTED. BATTERY ON OFFICER,
EXHIBIT 110 LETTER STATING OF SHOOTING
PEOPLE KILLING PEOPLE,
BROKEN WINDOWS, AND INEFFECTIVE
ASSISTANCE OF HARRIS COUNSEL
NOT ARGUING THIS IN AMENDED
PETITION.

INEFFECTIVE ASSISTANCE OF COUNSEL . .
IN FACT THAT MR. RAMIREZ HAD A CONFLICT
OF INTEREST WITH HIS TRIAL ATTORNEY
AND EXPRESSED DISSATISFACTION IN REQUESTING
SUBSTITUTION OF COUNSEL AND TO FREE HIM?

Stv. A. Ramirez - CR07-434

COURTROOM ONE

Time	Speak	Note
9:32:28 AM	CT	COURT IN SESSION/COURT REMARKS PARTIES PRESENT/PURPOSE OF HEARING - TRIAL STARTS A WEEK FROM TODAY
9:32:43 AM		CT RECEIVED 2 LETTERS FROM DEFENDANT, BUT DON'T HAVE COPIES OF LETTERS, DA DIDNT BRING COPY EITHER SHARE WITH ME YOUR CONCERNS
9:33:08 AM	JC	DEF IS ON THE LINE WITH US. DEF CAN HEAR PROCEEDINGS. LETTERS FROM DEFENDANT. I MET WITH HIM AT THE PRISON, HE WANTED NEW COUNSEL, HE WOULD HAVE TO MOTION THE COURT AND YOU WOULD HAVE TO DETERMINE.
9:33:53 AM	CT	DOES DEF FEEL FREE TO RELAY CONCERNS
9:34:05 AM	DEF	I FEEL THAT COUNSEL HAS NOT FULFILLED DUTIES AS MY ATTY, HAS NOT LET ME KNOW ABOUT ANYTHING GOING ON IN COURT BEEN CONFUSED AND HE DOESN'T EXPLAIN THINGS TO ME I ASKED HIM TO FILE MOTIONS FOR PHYSICAL EXAMINATION, LEFT LEG SHORT, UPPER BODY IS CROOKED, LIMITED DISABILITY BEEN THIS WAY BEFORE ACCIDENT. I ALSO EXPLAINED FOR PSYCH EVAL SUFFERED BEFORE ACCIDENT AND CRIME, SUFFER FROM DELUSIONS, HALLUCINATIONS, DEPRESSION LAST TIME I WAS ASSAULTED BY EMPLOYER AT HOSPITAL, ONE OF THE REASONS I BELIEVE HE LIED TO COURT ABOUT ME, I WASN'T COOPERATING, MALINGERING I'VE BEEN FOUND W/MENTAL AND PHYSICAL ILLNESS. I TALK TO DR FINK AND HE SAID THE STATES JOB IS TO FIND ME COMPETENT. THEY WANT ME COMPETENT TO SEND ME TO TRIAL NOT FAIR TO TALK TO ME ABOUT NOTHING
9:36:38 AM	DEF	DON'T FEEL I WAS PROPERLY EVALUATED, ALSO, NEUROLOGICAL EXAMINATION, SEVERLY ILL, MENTALLY AND PHYSICALLY FEEL COURT DOESN'T CARE ABOUT THAT COUNSEL HAS NOT FILED MOTIONS, I WANTED PRIVATE INVESTIGATOR CASE WORKER HAS BEEN HERE, CALLING FOR ME, THEY WERE BUSY, COUNSEL NOT IN GIVING ME A RUN AROUND I TOLD COUNSEL I WANTED TO KNOW WHAT WAS GOING ON WITH MOTIONS AND INVESTIGATOR I DIDN'T KNOW WHEN I WAS GOING TO TRIAL. I DIDN'T HAVE ENOUGH TIME TO PREPARE FOR MY CASE DRS TREATED ME THAT SAID I WAS DISABLED BEEN IN WHEELCHAIR FOR 2 YRS DON'T KNOW THE DRS I WANTED NEW COUNSEL HE SAID THEY PROBABLY WOULDN'T LET ME HAVE NEW COUNSEL. FEEL LIKE I'M GOING TO LOOSE THIS CASE HE HASN'T TALKED TO ME ENOUGH ABOUT THIS CASE

St v. A Ramirez - CR07-434

COURTROOM ONE

Time	Speak	Note
9:38:59 AM	DEF	I'M DISSATISFIED THANK YOU FOR LETTING ME SPEAK. WANT TO ANNOUNCE THAT IF I COULD POSTPONE THE COURT, GET NEW ATTY. IF YOU WOULD BE WILLING TO, BUT IF NOT I WILL GO TO COURT WITH HIM. IF I LOOSE THIS CASE, DON'T WANT HIM TO BE MAD AT ME OR LOOSE CASE FOR ME. ASKING FOR NEW ATTY. NOT DOING HIS DUTIES AS ATTY. THAT IS HOW I FEEL. I SAID IT AND I JUST FEEL HE MIGHT LOOSE THIS CASE FOR ANY REASON. I DON'T HAVE A GOOD FEELING ABOUT GOING TO TRIAL. THANK YOU, THAT'S ALL I HAVE TO SAY.
9:40:29 AM	CT	ANY OTHER COMMENTS - NONE. LET ME ASSURE YOU OF SOME THINGS. FILE DEMONSTRATES THAT ATTY WOULD AND SHOULD DO IN YOUR CASE. HE IS A PROFESSIONAL AND WILL WORK AS HARD AS HE CAN. HE WON'T BE MAD AT YOU FOR TRYING TO CHANGE LAWYERS. HE IS A SEASONED TRIAL LAWYER. CAN'T THINK ANYONE WHO WOULD DO YOU A BETTER JOB, YOU ARE AS WELL REPRESENTED AS YOU CAN BE. DON'T WANT YOU TO BELIEVE YOU WON'T GET A FAIR TRIAL. BASED ON THAT, COURT WON'T SUBSTITUTE COUNSEL AT THIS JUNCTURE. GO TO TRIAL.
9:41:52 AM	DEF	NO WAY I CAN POSTPONE COURT.
9:42:00 AM	CT	THE FILE IS OLD AS YOU KNOW IT. DON'T THINK WITNESSES WOULD BE SURPRISES. LEGITIMATE WITNESS WILL BE HERE FOR TRIAL. THAT WILL BE TAKEN CARE OF. DON'T BLAME YOU FOR BEING CONCERNED.
9:42:38 AM	DEF	ANY WAY THE DR CAN EXAMINE ME, FEEL I AM ILL. DON'T FEEL YOU WANT TO GIVE ME A CHANCE.
9:42:54 AM	CT	YOU HAVE BEEN EXAMINED, YOU HAVE COMPLAINTS, WE ALL HAVE THEM. THE COMPLAINTS YOU HAVE VOICED, AND DRS EXAMINED YOU SAY YOU ARE ABLE TO GO TO COURT. YOU ARE ABLE TO GO TO TRIAL AND ABLE TO PROCEED AND THAT IS WHAT WE WILL DO.
9:43:32 AM	DEF	NO WAY TO POSTPONE THE COURT.
9:43:38 AM	CT	NO REASON TO DO THAT, ALL PREPARED. IT WILL BE ON MONDAY.
9:43:50 AM	DEF	THANK YOU TO COSBY, AND DA -
9:44:08 AM	CT	WHAT YOU GOT IS NOT THE WAY IT IS. SUPREME COURT HAS APPT ME TO THIS CASE.
9:44:24 AM	DEF	I WANT YOU ON THIS CASE, YOU KNOW WHAT I WAS GOING THROUGH.
9:44:37 AM	CT	I WAS THERE THAT WE HAD THE HEARING, THE PLEA. REMEMBER YOU WERE CRYING.
9:44:52 AM	DEF	ALWAYS BEEN REMORSEFUL. WHEN BRETT CARTER GAVE ME EXTRA YEARS. I'M SORRY I WITHDREW MY PLEA.

Counsel
 did not explain this to me

following.

(1) the nature of the charge to which the plea is offered,

(2) the mandatory minimum penalty provided by law if any, and the maximum possible penalty provided by law for the offense to which the plea is offered, including any possible sentence enhancements

(Emphasis added) In order to ensure that the defendant understands “the nature of the charge[s],” *id.*, the district court must be satisfied that the defendant understands the essential elements of the charges that are subject to the plea. *See Garcia*, 121 N.M. at 548, 915 P.2d at 304. A related requirement directs the district court to “[make an] inquiry as shall satisfy it that there is a factual basis for the plea.” Rule 5-304(G) NMRA, *State v. Willis*, 1997-NMSC-014, ¶ 9, 123 N.M. 55, 933 P.2d 854. Finally, the record must contain an “affirmative showing that [the] plea was knowingly and voluntarily given.” *Garcia*, 121 N.M. at 547, 915 P.2d at 303; *see also Boykin*, 395 U.S. at 242-43.

(10) At the January 2009 plea hearing in this case the district court tried to satisfy the requirements of Rules 5-303(F) and 5-304(G) by establishing, *inter alia*, a factual basis for the charges and engaging Defendant in an exchange intended to confirm the knowing, intelligent, and voluntary character of his plea. At the beginning of the plea hearing, the judge asked Defendant whether he understood the charges. The district

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1 right to a jury trial and the right to confront one's accusers. *Id.* at 242-43, *State v.*
2 *Montler*, 85 N.M. 60, 61, 509 P.2d 252, 253 (1973). In addition, "we review the trial
3 court's denial of a defendant's motion to withdraw his guilty plea for an abuse of
4 discretion." *State v. Barnett*, 1998-NMCA-105, ¶ 12, 125 N.M. 739, 965 P.2d 323.
5 The "trial court abuses its discretion when it acts unfairly or arbitrarily, or commits
6 manifest error." *Id.* "A denial of a motion to withdraw a guilty plea constitutes
7 manifest error when the undisputed facts establish that the plea was not knowingly
8 and voluntarily given." *State v. Garcia*, 1996-NMSC-013, 121 N.M. 544, 546, 915
9 P.2d 300, 302.

10 (9) A plea is not knowing, intelligent, and voluntary unless the defendant
11 "understand[s] his guilty plea and its consequences." *Id.* at 547, 915 P.2d at 303; *see*
12 *also Boykin*, 395 U.S. at 243-44 (explaining that state trial courts should "make sure
13 [a defendant] has a full understanding of what the plea connotes and of its
14 consequence[s]"). Rule 5-303(F) NMRA codifies the matters our district courts must
15 address to ascertain that a defendant grasps the contents and consequences of a plea.
16 In relevant part, Rule 5-303(F) provides

17 The court shall not accept a plea of guilty or no contest without first, by
18 addressing the defendant personally in open court, informing the
19 defendant of *and determining that the defendant understands the*

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:26:46 PM	CHANDLER	RESPONDS, WITH REGARD TO THE DOUBLE JEOPARDY MOTION, THESE ARE TWO DISTINCT ACTS OVER A PERIOD OF TIME, THE MOST APPROPRIATE CASES STATE VS DERRICK IRVIN, THE APPELLATE COURTS SAID EACH TIME WEATHER THERE WAS SOME DIFFERENT ITEMS DIFFERENT MOVEMENT IN BETWEEN THE TWO, ETC
2:29:32 PM		WHY WOULD YOU THROW AWAY A PERFECTLY GOOD PAIR OF SHORTS WITH YOUR ID IN THE DUMPSTER, THERE IS NO DOUBLE JEOPARDY ISSUE
2:30:37 PM	COSBY	PARAGRAPH PAGE 55 IN THE OPINION FROM 2006 OF SUPREME COURT CASE THERE WERE 5 COUNTS CHARGED ETC
2:34:16 PM	COURT	IS OF THE OPINION, IN MY MIND THERE COULD BE TWO DIFFERENT THINGS, THE FACTS WOULD SUPPORT THAT HE DISPOSED OF HIS CLOTHING IMMEDIATELY AFTER THE INCIDENT, WILL NOT GRANT THE MOTION ON THE DOUBLE JEOPARDY, SEES YOUR POINT, THAT THERE IS SUFFICIENT EVIDENCE
2:35:30 PM	COSBY	WE HAVE A DIFFERENT TIME WHEN PHONE CALLS WERE MADE,
2:36:02 PM		AS TO THE FIRST DEGREE, RENEWS MOTIONS OF PSYCHOLOGICAL EVALUATION OF HIS CLIENT I AM GETTING FRUSTRATED BECAUSE IT IS VERY DIFFICULT TO REPRESENT A CLIENT WHO IS.
2:37:30 PM		CONCERNED THAT HE IS NOT COMPETENT TO MAKE CHOICE TO TESTIFY
2:37:42 PM	COURT	ADVISES DFT THAT HE HAS RIGHT NOT TO TESTIFY, YOU DO NOT HAVE TO TESTIFY, IF YOU EXERCISE THAT RIGHT NOT TO TESTIFY, IT IS TABOO IF YOU MAKE DECISION TO TESTIFY
2:39:05 PM	DFT	I DON'T KNOW WHAT TO DO, I DON'T THINK I AM MENTALLY BALANCED, I WANT TO ASK CAN JURY KNOW ABOUT MY MEDICAL PROBLEMS
2:41:22 PM	COURT	WE HAVE LISTENED TO YOU, THE ISSUES CONCERNING TO YOU ARE PERSONAL, THEY DO NOT ARISE TO THE POINT, WE ARE GOING TO GO FORWARD WITH THE TRIAL
2:42:07 PM	DFT	I FEEL THAT YOU ARE ALL AGAINST ME ETC
2:43:11 PM	RECESS	
3:08:40 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, COURT HAS MADE RULINGS ON MOTION FOR DIRECTIVE VERDICT, WANTS TO READ FROM THE FILE ON THIS CASE,
3:10:45 PM		BELIEVES THAT DFT IS COMPETENT TO STAND TRIAL, PREPARED TO CONTINUE THIS TRIAL, DOES THE DEFENSE INTEND TO PRESENT A DEFENSE

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:08:49 PM	COSBY	RXEX - WHAT IS A WASH IT IS A THIN COATING OF THAT PARTICULAR MATERIAL, A JACKET IS GOING TO BE THICKER AND WEIGH MORE AND BE AN ACTUAL PART OF THAT BULLET ETC.
2:11:28 PM		WITNESS EXCUSED
2:12:28 PM		#20 WITNESS KEITH BESETTE CALLED BY CHANDLER / SWORN / DEX
2:13:15 PM		WORKS WITH CURRY COUNTY SHERIFF'S OFFICE LITTLE OVER 17 YEARS
2:13:39 PM		RESPONDED TO PLAINS REGIONAL HOSPITAL, AND TO COLLECT CLOTHING
2:14:20 PM		WHEN HE ARRIVED AT HOSPITAL WHAT DID HE SEE, HIS CLOTHING WAS UNDERNEATH HIM. DOES NOT KNOW HOW HIS CLOTHING WAS REMOVED
2:15:24 PM		DOES NOT RECALL IF CLOTHING WAS CUT OR NOT, COLLECTED IT AND BAGGED IT, AS HE REMEMBERS THERE WAS BLOOD ON IT, COLLECTED A WALLET AND A SET OF KEYS, HE HAD BOOTS
2:16:10 PM		DID NOT FIND ANY WEAPONS IN THE CLOTHING NOTHING BUT A SET OF KEYS AND HIS WALLET
2:16:38 PM	COSBY	XEX - DID YOU PUT THE CLOTHING IN EVIDENCE, DID YOU SEND IT TO THE CASE MANAGER, AT TIME THE COMMANDER WAS ROGER GRAU
2:17:29 PM		DOES NOT REMEMBER WHO HE GAVE CLOTHING TOO, GAVE THE BAG NOT THE ARTICLE
2:18:10 PM		WITNESS EXCUSED
2:18:33 PM	CHANDLER	STATE ANNOUNCES REST
2:19:07 PM		JURY EXCUSED FROM COURTROOM
2:20:13 PM	COSBY	MOTIONS CONCERNING FIRST THE TWO COUNTS OF TAMPERING OF EVIDENCE, DOUBLE JEOPARDY MULTIPLE CHARGES, STATE VS SILVA 2008 NM SUPREME COURT, FURTHER SITES CASES,
2:22:00 PM		BASICALLY OF WHAT IS ISSUE OF DOUBLE JEOPARDY, STATE HAS CHARGED TWO COUNTS OF TAMPERING, ONE WITH THE CLOTHING
2:22:57 PM		THERE IS NOT EVIDENCE THAT THEY WERE TAKEN INTENTIONALLY
2:23:17 PM		WHAT WE HAVE HERE IS A DISPOSITION OF SOME SHORTS, NOBODY DESCRIBED A RED BELT, NO EVIDENCE MY CLIENT DISPOSED OF THEM WITH SPECIFIC INTENT, IF HE DISPOSED OF THEM, AS FAR AS THE FIREARM, IT WAS DISPOSED OF BASED ON PHONE CALLS OF BAM BAM AND RAGS TO RICHES
2:25:11 PM		AS FAR AS HIM CALLING FROM THE JAIL, THEY TOOK INTERPRETATION OF BAM BAM BEING A GUN

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RDEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES,
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE, ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD-MR COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM, I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:45:20 PM		YOU WERE NOT HOMELESS "YES I WAS HOMELESS SINCE JANUARY 2007" YOUR BROTHER SAID YOU COULD NOT STAY THERE BECAUSE YOU WERE NOT FOLLOWING THE RULES, MY SISTER HAS TO MANY MOUTHS TO FEED ETC.
1:46:31 PM		YOU HAD A HOTEL YOU STAYED AT VALUE INN, DID NOT COST YOU ANYTHING BECAUSE SOMEONE WAS PAYING YOUR ROOM, MY MOM SAID SHE WOULD GET ME THE MOTEL FOR A WEEK,
1:47:32 PM		I DID NOT FEEL ANGRY, I WAS DEPRESSED
1:47:55 PM		ELADIO WENT INTO GARAGE TO PUT UP VACUUM AND YOU LIFTED UP YOUR SHIRT, HE DID NOT LEAVE ANY MARKS ON YOU ETC.
1:48:58 PM	COSBY	OBJECTION ARGUMENTATIVE
1:49:06 PM	CHANDLER	YOU SHOT HIM IN THE CHEST AREA "I DON'T KNOW MY EYES WERE CLOSED, "WHAT HAPPENED HE DID CHOKE ME AT ONE POINT" YOU DON'T GET SCRATCHED WHEN SOMEBODY IS CHOKING YOU
1:50:06 PM		GRACE FINKEY SAID SHE DROVE BY AND YOU WERE CHASING ELADIO WITH A GUN
1:50:32 PM		WHEN ELADIO WAS DOWN ON THE FROUND YOU SHOT HIM IN THE HEAD "WHEN HE CAME AFTER ME I SHOT"
1:51:26 PM		IF ELADIO WAS LAYING IN GROUND , "I SHOT TOWARDS THE GROUND I DON'T KNOW WHERE IT HIT HIM
1:52:01 PM		IT IS NOTHING NEW FOR YOU TO BE INVOLVED IN ALTERCATIONS
1:52:51 PM		BENCH CONFERENCE
1:53:29 PM	CHANDLER	ISN'T IT TRUE THAT YOU HEAD BUTTED A POLICE OFFICER "YES"
1:53:58 PM		YOU WANT THIS JURY TO BELIEVE YOU WERE DEFENDING YOURSELF
1:54:13 PM	COSBY	MOVES FOR A MISTRIAL
1:54:31 PM	CHANDLER	YOU RECALL A LOT OF REQUESTS TO GO TO THE LAW LIBRARY TO RESEARCH
1:54:51 PM		BENCH CONFERENCE / NOT GOING TO GRANT A MIS TRIAL JUST DON'T ASK QUESTIONS
1:56:06 PM	CHANDLER	YOU TESTIFIED THAT IF YOU REALLY WANTED TO HURT OR KILL ELADIO OR DEBRA YOU COULD OF WALKED IN THE HOUSE AND DONE IT "
1:56:42 PM	COSBY	RDEX - YOU UNDERSTAND WHAT YOU ARE CHARGED WITH
1:57:07 PM		DID YOU AMBUSH ELADIO ROBLEDO THAT DAY, NO IT JUST HAPPENED, I HAD THAT GUN FOR MY PROTECTION IT JUST HAPPENED
1:58:08 PM		DID YOU DO ANYTHING TO PLAN THIS KILLING

ST VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION.
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT.
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL.
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

ST VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:26 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE.
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED.
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THERE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINK, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:41 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

10/10/2013

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EXHIBIT 2 page 4

Sam Saiz

CSP or statutory rape

90's -

DA (myer) → Cosmo Ripa

DA → ASC

Judge Hensley

DOB:

SS#

89-CR-19173

96-CR-12536 - OLT 3RD

THE minor
who set
abused
me at 15 + 16
GAY GUY

EXHIBIT 2

page 4

UNITED STATES of America,
Plaintiff-Appellee,

v.

Trung Tran NGUYEN, Defendant-
Appellant.

No. 00-10272.

United States Court of Appeals,
Ninth Circuit

Submitted Dec. 12, 2000 *

Filed Aug. 28, 2001

Defendant was convicted in the United States District Court for the District of Guam, Harold D. Vietor, J., of three methamphetamine offenses. Defendant appealed. The Court of Appeals, Ferguson, Circuit Judge, held that (1) denial of continuance violated defendant's due process rights, and (2) denial of motion to substitute counsel violated defendant's Sixth Amendment rights.

Reversed

1. Criminal Law §1151

The Court of Appeals reviews the denial of a continuance for abuse of discretion.

2. Constitutional Law §268(3)

Criminal Law §590(2), §10

Denial of continuance in prosecution for narcotics offenses violated defendant's due process rights; district court denied continuance at meeting that defendant did not attend, when private defense attorney arrived on first day of trial indicating that he had been contacted by defendant's family; the continuance was denied without hearing despite defendant's repeated complaints to the court about his public defender, and public defender's acknowl-

edgment that the attorney-client communications had broken down, and trial judge stated that he did not travel halfway around the world to continue defendant's trial. U.S.C.A. Const. Amend. 5.

3. Criminal Law §1156(7)

In the absence of a sufficient summary on the record, the Court of Appeals affirms the denial of a continuance only if the district court displays adequate care and concern for the defendant's rights.

4. Criminal Law §641.10(2)

Generally, district judges have broad latitude to deny a motion for substitution of counsel on the eve of trial when the request would require a continuance; however, this discretion must be balanced against the defendant's Sixth Amendment right to counsel. U.S.C.A. Const. Amend. 6.

5. Criminal Law §641.12(1)

An unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel. U.S.C.A. Const. Amend. 6.

6. Criminal Law §641.10(2)

A defendant is denied his Sixth Amendment right to counsel when he is forced into a trial with the assistance of a particular lawyer with whom he is dissatisfied, with whom he will not cooperate, and with whom he will not, in any manner whatsoever, communicate. U.S.C.A. Const. Amend. 6.

7. Criminal Law §641.12(1)

Even if present counsel is competent, a serious breakdown in communications can result in an inadequate defense. U.S.C.A. Const. Amend. 6.

* The panel unanimously finds this case suitable for decision without oral argument. Fed.

*INEFFECTIVE
ASSISTANCE
OF COUNSEL
SAME* **G**

SCHELL v. WITEK
Civ. No. 218 F.3d 1017 (9th Cir. 2000)

1017

may state a claim cognizable under the APA that the Secretary of State has breached her duty, imposed by the FARR Act, to implement Article 3 of the Torture Convention. Such a claim, brought in a petition for habeas corpus, becomes ripe as soon as the Secretary of State determines that the fugitive is to be surrendered to the requesting government.

{18} We may not reach the merits of Cornejo-Barreto's claim at this time. Habeas corpus review is available only when no other relief is available.

We therefore **AFFIRM** the district court's denial of the petition for habeas corpus but direct that it should be without prejudice to the filing of a new petition should the Secretary of State decide to surrender Cornejo-Barreto.

KOZINSKI, Circuit Judge, concurring.

I do not join Section III of the opinion, because the question of whether petitioner would be entitled to judicial review of an extradition decision by the Secretary of State is not before us. I would hold only that the district court does not have jurisdiction to review petitioner's claim under the Torture Convention, because the FARR Act does not authorize judicial enforcement of the Convention, see *Sandhu v. Burke*, No. 97 Civ. 4608, 2000 WL 191707, at *9 (S.D.N.Y. Feb. 10, 2000) and the Convention is not self-executing under the four-part test of *Saipan v. United States Dep't of Interior*, 502 F.2d 90, 97 (9th Cir. 1974). See *Barapind v. Reno*, 72 F.Supp.2d 1132, 1148-49 (E.D. Cal. 1999); see also *Sandhu*, 2000 WL 191707, at *10.



Wayne Dale SCHELL, Petitioner-Appellant,

v

Larry WITEK, Warden; **Bill Lockyer**, Attorney General, State of California,¹ Respondents-Appellees

No. 97-56197.

United States Court of Appeals,
Ninth Circuit

Argued and Submitted March 23, 2000

Filed July 11, 2000

Petitioner convicted of burglary filed pro se petition for writ of habeas corpus. The United States District Court for the Central District of California, John G. Davies, J., denied relief. Petitioner appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On en banc review the Court of Appeals, Trott, Circuit Judge, held that: (1) evidence supported conviction, (2) petitioner did not waive and abandon his claim that state court violated his Sixth Amendment right to counsel by failing to rule on his pretrial motion requesting substitute counsel, (3) trial court's failure to inquire into request for substitute appointed counsel was subject to review to determine whether error actually violated petitioner's constitutional rights, overruling *Bland v. California Dep't of Corrections*, 20 F.3d 1469, *Crandall v. Bunnell*, 144 F.3d 1213, (4) petitioner was entitled to evidentiary hearing on claims of irreconcilable conflict, and (5) petitioner was entitled to hearing on claims of ineffective assistance of counsel.

Affirmed in part, reversed in part, and remanded.

Opinion superseded, 181 F.3d 1094

¹ Bill Lockyer is substituted for his predecessor Daniel E. Lungren as Attorney General

for the State of California. Fed. R. App. P. 43(c)(2).

whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate" *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir. 1970).

There is no question in this case that there was a complete breakdown in the attorney-client relationship. By the time of trial, the defense attorney had acknowledged to the Court that Nguyen "just won't talk to me anymore." In light of the conflict, Nguyen could not confer with his counsel about trial strategy or additional evidence, or even receive explanations of the proceedings. In essence he was "left to fend for himself," *United States v. Gonzalez*, 113 F.3d 1026, 1029 (9th Cir. 1997), in violation of his Sixth Amendment right to assistance of counsel. Nonetheless, the District Judge ignored the problems between Nguyen and his attorney commenting that Nguyen's "strike" was not ground for a continuance, explaining to Nguyen that "the Federal Public Defenders provide very good representation to defendants," and remarking that he was "totally comfortable" with the public defender representing Nguyen. The issue in this case is the attorney-client relationship and not the comfort of the court or the competency of the attorney.

Finally, the District Judge commented that any problems with his decision not to grant a continuance for the substitution of counsel could be remedied on appeal by a challenge regarding the effective assistance of counsel. For a judge to maintain that the only solution to an attorney-client conflict is an appeal based on ineffective assistance is destructive of fundamental due process. By incorrectly limiting the defendant's arguments, the suggestion risks undermining the defendant's rights on appeal and on retrial after an appeal. See *Taylor v. Reno*, 164 F.3d 440, 446 (9th Cir. 1998) (addressing but rejecting on the facts, the argument that the judge's com-

ments might violate due process by huffing the defendant out of pursuing a particular challenge).

For these reasons, the District Court abused its discretion in denying a reasonable continuance for a substitute counsel to prepare for trial.

B

[8-10] Under the standards for denying a motion to substitute counsel, the District Court also erred. We review the denial of a motion for substitution of counsel for abuse of discretion. *United States v. Corona-Garcia*, 210 F.3d 973, 976 (9th Cir. 2000), cert. denied, 531 U.S. 896, 121 S.Ct. 231, 148 L.Ed.2d 165 (2000). In reviewing a denial of substitution of counsel, we consider (1) the timeliness of the motion, (2) the adequacy of the trial court's inquiry, and (3) the extent of conflict created. *Id.*

[11] With regard to timeliness, as mentioned above, the District Judge failed to adequately balance Nguyen's Sixth Amendment rights against any inconvenience and delay from granting the continuance. *Moore*, 159 F.3d at 1160. In fact, the District Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The mere fact that the jury pool was ready for selection or even that the jury was ready for trial does not automatically outweigh Nguyen's Sixth Amendment right.

[12] The District Judge also failed to conduct a sufficient inquiry into Nguyen's request. For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant privately and in depth, *Moore*, 159 F.3d at 1160, and examine available witnesses, *Gonzalez*, 113 F.3d at 1028. The District Judge did neither here. Al

TELL JUNE KERR

20

U.S. v. ADELZO-GONZALEZ

Cite as 2d8 F.3d 773 (9th Cir. 2004)

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defendant's right to counsel USCA Const Amend 6

Criminal Law §641.10(2)

Before ruling on a motion to substitute counsel due to an irreconcilable conflict, a district court must conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concern and the inquiry must also provide a sufficient basis for reaching an informed decision.

8 Criminal Law §641.10(2)

Before ruling on a motion to substitute counsel due to an irreconcilable conflict, the district court may need to evaluate the depth of any conflict between defendant and counsel, the extent of any breakdown in communication, how much time may be necessary for a new attorney to prepare, and any delay or inconvenience that may result from substitution.

9 Criminal Law §641.10(2)

While open-ended questions are not always inadequate for a district court to rule on a motion to substitute counsel due to an irreconcilable conflict, in most circumstances a court can only ascertain the extent of a breakdown in communication by asking specific and targeted questions.

10. Criminal Law §641.10(2)

Where defendant's attorney opposed defendant's motion to substitute counsel, district court should have stayed proceedings and appointed separate attorney to advise and represent defendant as to inquiries necessary for court to rule on motion.

* The Honorable Susan Illston, United States District Judge for the Northern District of

11. Criminal Law §641.10(2)

The fact that a motion to substitute counsel was made on the eve of trial alone is not dispositive of issue of whether motion was untimely.

Phillip A. Trevino, Law Offices of Phillip A. Trevino, Beverly Hills, California for the defendant appellant.

John S. Gordon and Michael S. Lowe, Assistant United States Attorneys, Los Angeles, California for the plaintiff-appellee.

Appeal from the United States District Court for the Central District of California. Carlos R. Moreno, District Judge, Presiding. DC No. 98-0790-CRM.

Before Before HUG and B FLETCHER Circuit Judges, and ILLSTON, District Judge.*

ILLSTON, District Judge.

Carlos Adelzo-Gonzalez appeals his conviction following a plea of guilty to criminal charges of hostage taking, transporting illegal aliens, and harboring illegal aliens. At issue is whether the district court abused its discretion in denying Adelzo-Gonzalez's repeated requests for appointment of substitute counsel. We conclude that the district court did not make an adequate inquiry and failed to recognize the material breakdown in trust and communication between defendant and his court-appointed attorney. Despite clear indications of an irreconcilable conflict between defendant and his attorney, the district court denied Adelzo-Gonzalez's requests for a new attorney on three occasions.

California, sitting by designation.

WILSON v. MINTZES

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Cite as 761 F.2d 273 (1985)

counsel's loyalty to his own interests rather than those of his client adversely affected his performance in terms of appearance before the jury as well as his tactical conduct of the case

[21] Second, in *Cronic*, 104 S.Ct. at 2047, the Court has reaffirmed that no specific showing of prejudice is required when an accused is deprived of his sixth amendment right to effective cross-examination. *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1106, 1111, 38 L.Ed.2d 347 (1974). Prejudice need not be shown since denial of such a right is of such magnitude that "no amount of showing of want of prejudice would cure it." *Smith v. Illinois*, 390 U.S. 123, 131, 88 S.Ct. 748, 749, 19 L.Ed.2d 954 (1968) (quoting *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.Ed.2d 314 (1966)). If prejudice is presumed when a trial judge denies a defendant the right of cross-examination, reason dictates that such presumption be of equal force when a trial judge unreasonably refuses a defendant's request to remove counsel who flatly refuses to cross-examine a witness because of his running feud with the judge.²⁰ Therefore, even if a showing of prejudice were a prerequisite to reversal, the conflict of interest between counsel and client along with counsel's flat refusal to cross-examine a witness require a presumption of prejudice in this case.

III.

We establish no novel right or theory of constitutional law, but rely on tried and true principles as old as the document we expound. The Court has recognized that "Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation." *Morrison*, 449 U.S. at 364, 101 S.Ct. at 667. The accused has demonstrated that his right to choose the counsel to present his defense was unconstitutionally abridged. There-

20. While deprivation of his sixth amendment right to effective cross-examination may entitle an accused to a presumption of prejudice an accused must establish an abuse of discretion

fore, having concluded that the trial court's decision was arbitrary and unreasonable, we hold that appropriate respect for Wilson's right of choice can be accorded only by directing the district court to grant the writ.

Accordingly, the judgment of the district court is REVERSED and the case is REMANDED to the district court with instructions to grant the writ of habeas corpus.

ENGEL, Circuit Judge, dissenting.

I respectfully dissent.

In our original opinion we stated "the issue presented is whether the petitioner was deprived of effective assistance of counsel when the trial judge denied petitioner's repeated requests for substitute counsel." *Wilson v. Mintzes*, 738 F.2d 424, 425 (6th Cir.1984). When the Supreme Court vacated that judgment and remanded for our consideration in light of *Strickland v. Washington*, — U.S. —, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the majority shifted ground away from the effective assistance issue and moved toward the Sixth Amendment denial of an accused's right to counsel of his choice. The majority now asserts that "Wilson has not claimed that, and the parties have not argued whether, counsel was constitutionally ineffective. The [state] trial judge, however, apparently believed that counsel's competency was implicated." Actually, the issue as presented to the Michigan Court of Appeals was whether the trial court erred in "not granting a mistrial or holding a full hearing on the competency issue." The same issue was stated in Wilson's petition filed in the district court as "whether the trial court erred in failing to hold a full evidentiary hearing on the matter of competency of defense counsel." Wilson's brief to this court reflects a similar shift in emphasis from that in the state court and in his habeas petition in the district court.

under the standards set out in Part I B above to be entitled to reversal based on denial of his motion for substitution of counsel

UNITED STATES of America,
Plaintiff-Appellee,

v.

Robert D'AMORE, Defendant-Appellant.
No. 34-10091.

United States Court of Appeals
Ninth Circuit.

Argued and Submitted March 16, 1995.

Decided June 12, 1995

Government sought to revoke defendant's probation. The United States District Court for the District of Nevada, Lloyd D. George, Chief Judge, denied defendant's motion to substitute private for appointed counsel and revoked probation. Defendant appealed. The Court of Appeals, William A. Norris, Circuit Judge, held that (1) district court made inadequate inquiry before denying defendant's motion to substitute counsel (2) evidence showed substantial breakdown of communications between defendant and appointed counsel, and (3) denial of motion was not warranted on grounds of untimeliness.

Reversed and remanded. Order of revocation vacated.

1. Criminal Law ¶1152(1)

District court's denial of motion to substitute counsel is reviewed for abuse of discretion; such discretion must be exercised, however, within limitations of Sixth Amendment which grants criminal defendants qualified constitutional right to hire counsel of their choice. U.S.C.A. Const.Amend. 6.

2. Criminal Law ¶41.10(1)

Criminal defendants' constitutional right to hire counsel of their choice is qualified in that right may be abridged to serve some compelling purpose; such compelling purpose may be found when granting motion would lead to delay in proceedings and government's interest in prompt and efficient administration of justice outweighs defendant's need for new counsel to adequately defend himself. U.S.C.A. Const.Amend. 6.

3. Criminal Law ¶41.5(5), 41.10(1)

Court may override defendant's choice of counsel in order to maintain integrity of judicial system by prohibiting representations that involve conflict of interest or ethically unfit lawyer. U.S.C.A. Const.Amend. 6.

4. Criminal Law ¶41.10(2), 1165.20(1)

Absent compelling purpose, it is violation of Sixth Amendment to deny motion to substitute counsel and is error that must be reversed, regardless of whether prejudice results. U.S.C.A. Const.Amend. 6.

5. Criminal Law ¶41.10(2)

When substitution of defense counsel does not threaten any delay in proceedings, there is no reason to deny substitution whether or not defendant has complaints against or irrevocable conflict with, appointed counsel. U.S.C.A. Const.Amend. 6.

6. Criminal Law ¶41.10(2)

When granting motion for substitution of defense counsel would require continuance, court must weigh defendant's Sixth Amendment interest against any delay or inconvenience caused by request for substitution, even when request is made at last minute. U.S.C.A. Const.Amend. 6.

7. Criminal Law ¶1134(3)

In reviewing district court's denial of late motion to substitute private for appointed counsel, Court of Appeals focuses on considerations of adequacy of district court's inquiry, extent of conflict between defendant and counsel, and timeliness of motion and extent of any inconvenience or delay that would result from granting motion. U.S.C.A. Const.Amend. 6.

8. Criminal Law ¶41.10(2)

Before district court can engage in measured exercise of discretion, upon defendant's motion to substitute private for appointed counsel, court must conduct inquiry adequate to create sufficient basis for reaching informed decision. U.S.C.A. Const.Amend. 6.

9. Criminal Law ¶41.10(2)

District court conducted unsatisfactory inquiry prior to denial of defendant's motion

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tion was not adequately proven, we need not consider the applicability of California strict liability law.

AFFIRMED



UNITED STATES of America,
Plaintiff-Appellee,

v.

Carlos ADELZO-GONZALEZ,
Defendant-Appellant.

No. 99-50152.

United States Court of Appeals
Ninth Circuit.

Argued and Submitted March 5, 2001

Filed Sept. 26, 2001

Defendant plead guilty in the United States District Court for the Central District of California, Carlos R. Moreno, J., to hostage taking, transporting illegal aliens and harboring illegal aliens and was sentenced to 63 months of imprisonment. Defendant appealed. The Circuit Court, Illston, District Judge, sitting by designation, held that the district court abused its discretion in denying defendant's motions for substitution of counsel.

Reversed, vacated, and remanded.

1. Criminal Law §1134(3)

Claim of ineffective assistance of counsel is generally inappropriate on direct appeal. U.S.C.A. Const.Amend 6.

2. Criminal Law §1134(3)

There are two exceptions to general rule against raising ineffective assistance of counsel claims on direct appeal. (1) when the record on appeal is sufficiently developed to permit review and determination of the issue, and (2) when the representation is so inadequate that it obviously denies a defendant his Sixth Amendment right to counsel. U.S.C.A. Const.Amend 6.

3. Criminal Law §1134(3)

Where defendant raised arguments that district court erred each time it denied his motions for appointment for substitute counsel and deprived him of his Sixth Amendment right to counsel as two separate grounds for appeal, Court of Appeals would treat arguments as interrelated and review only decision to deny substitute counsel. U.S.C.A. Const.Amend 6.

4. Criminal Law §1152(1)

Court of Appeals reviews a district court's denial of a motion for substitution of counsel for abuse of discretion.

5. Criminal Law §1158(1)

District court's factual findings are reviewed on appeal under the clearly erroneous standard.

6. Criminal Law §641.10(2)

District court abused its discretion in denying defendant's motions to substitute counsel, court's open-ended questions were inadequate to probe into nature of attorney-client relationship after defendant explained his attorney used bad language and threatened to "sink him for 105 years so that he wouldn't be able to see his wife and children," extent of conflict interfered with attorney's ability to provide representation as shown by his calling defendant a liar and defendant stating he would rather represent himself, and any delay in substituting counsel was outweighed by defen-

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to hold a second hearing "fairminded jurists" could conclude that the trial judge's inquiry was still adequate and that the extent of the conflict did not mandate the substitution of counsel. *Harrington v. Richter* — U.S. —, 131 S.Ct. 770, 786, 178 L.Ed.2d 624 (2011) (quoting *Yarbrough v. Alvarado*, 541 U.S. 652, 664, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004)) (internal quotation marks omitted).

31 Petitioner does not assert that his reasons for requesting a second hearing for substitute counsel differed in any respect from the complaints he made during the prior *Marsden* hearing. (See Pet. 10, 50–51.)

*24 Furthermore, "fairminded jurists" could also conclude that the trial judge's observations did not require him to "delve deeper into the nature of [Petitioner's] relationship with the appointed counsel." *United States v. Adelzo-Gonzalez*, 268 F.3d 772, 778 (9th Cir. 2001). Although Petitioner expressed dissatisfaction with counsel's performance while he was on the stand, (see Lodgment 24, at 246–47, 275–78), "there were [no] clear indications of serious discord and friction between [Petitioner] and his attorney." *Adelzo-Gonzalez*, 268 F.3d at 778 (emphasis added). Petitioner's disapproval of his attorney's conduct pales in comparison to the threats, foul language, and insults on the part of counsel in *Adelzo-Gonzalez*. See *id.* at 774–76, 778–80 (holding that trial judge needed to inquire further into defendant's allegations concerning irreconcilable conflict). Furthermore, "[t]he fact that [Petitioner] testified at his trial is evidence that the lines of communication between [him] and [counsel] were open[.]" *Shepard v. Chavez*, No. 10–3249, 2012 WL 4038446, at *29 (E.D. Cal. Sept. 12, 2012), especially given Petitioner's acknowledgement that counsel had informed him beforehand that taking the stand would be unwise. (See Lodgment 24, at 211–12.) Thus, it was not unreasonable to conclude that the trial judge's observations, along with Petitioner's complaints during the first *Marsden* hearing, provided a "sufficient basis" to make an informed decision that Petitioner and counsel did not have an irreconcilable conflict. See *Smith*, 282 F.3d at 764 (quoting *McClendon*, 782 F.2d at 789).

Additionally, "fairminded jurists" could easily conclude that Petitioner's request, which was made after the close of evidence, was untimely. See *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). Therefore, AEDPA's

deferential standard of review bars habeas relief on Ground Fifteen.

3. Petitioner's Other Claims of Ineffective Assistance of Counsel

Ground Sixteen alleges that trial counsel was ineffective because he "concealed evidence, refused to investigate evidence, refused to present expert witnesses, allowed the prosecutor to deceive the court and jury and refused to act as [d]efense [c]ounsel as defined in the relevant [G]rounds 1–15 of this [P]etition." (Pet. 10, 52.) Petitioner also asserts that defense counsel's closing argument was constitutionally deficient. (See *id.* 52–53.) The Superior Court rejected Ground Sixteen, reasoning that

In order to establish ineffective assistance of counsel based on failure to "call additional witnesses or present additional evidence[.]" [Petitioner must show that his counsel's representation was so deficient that it resulted in a total breakdown of the adversarial process and not just trial tactics. Further,] [Petitioner must show] that the additional evidence or witnesses would have yielded a more favorable result. The [Petitioner's] writ fails to allege facts or present evidence establishing a prima facie case of habeas relief.

*25 (*Id.* at 3, 5.) As the following analysis demonstrates, the Superior Court's holding was neither contrary to nor an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States.³²

32 Grounds One through Twelve each include specific allegations concerning trial counsel's purported deficient performance. (See Pet. 17–18, 20, 22, 24–25, 27–28, 30, 32, 34, 36, 38, 40–41, 43–44.) The Court considers some of these allegations in the context of the deficient performance analysis, whereas others are addressed in the prejudice discussion. Moreover, defense counsel's closing argument is analyzed in the deficient performance section.

Apart from the allegations in Grounds One through Twelve and the assertion that defense

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mine who was telling the truth, and the trial court gave the proper instruction on how to view expert opinion testimony.

During its case in chief, Dr. Roll again testified for the State. He stated that he interviewed the complainant and conducted a series of psychological tests. Dr. Roll concluded that the complainant suffered from PTSD "consistent with chronic sexual abuse." In addition to repeating several statements by the complainant concerning her fear of her stepfather and her statements regarding sexual abuse by him, Dr. Roll also specifically stated that the complainant's symptoms were consistent with sexual abuse by her stepfather, the defendant Marquez. He found that the complainant suffered from several stressors, but he stated that sexual trauma was the most severe stressor or cause of her symptoms.

Dr. Roll stated that it was not the function of the examining psychologist to determine if an alleged victim was telling the truth, but he testified that it was virtually impossible for the complainant to be faking her symptoms. Dr. Roll also stated that psychologists do not check for external inconsistencies, that is, they do not reference extrinsic sources to determine whether the complainant is lying. Rather, he testified, they check for internal consistencies, that is, whether the complainant's story is plausible or whether it is inherently inconsistent.

Dr. Lenssen also testified for the State at trial and concluded from her evaluation that the complainant suffered from PTSD. She stated that although several stressors may be present, the cause could be traced, and she believed that the complainant's symptoms could be traced to sexual abuse. Unlike Dr. Roll, she did not directly inculcate Marquez. She did recount, however, some of the complainant's statements regarding sexual abuse by her stepfather.

Dr. Lenssen also testified that in her opinion, the complainant was not fabricating her story. As in *Alberico*, however, she testified that the PTSD diagnosis is not a credibility assessment and that it makes a difference whether the complainant is tell-

ing the truth. The qualifications of both Dr. Roll and Dr. Lenssen were not challenged.

Dr. Siegel, also a clinical psychologist, testified for the defense at trial. While he did not contest the other expert witnesses' diagnoses that the complainant exhibited PTSD symptoms, he stated that the complainant suffered from several stressors, all of which cumulatively could have caused PTSD. He also testified that a PTSD diagnosis depends in large part upon what the complainant is saying and whether she is telling the truth. In addition, Dr. Siegel stated that DSM III-R contains a cautionary note about its use in a forensic setting.

III ISSUES

A Arguments for the Defense

On appeal, both defendants make similar arguments against the admission of PTSD testimony. They claim that the State failed to lay the proper scientific foundation for its admission, arguing that PTSD evidence is not generally accepted as a reliable means for determining whether sexual abuse has occurred. Both defendants advocate the continued use of the *Frye* test as a predicate for the admission of expert opinion testimony.

The defendants also argue that PTSD evidence is not relevant because the experts' testimony went beyond the scope of what their expertise allows. They concede that PTSD testimony may be admitted if its purpose is to explain the victim's delayed reporting of the incident or her initial denial or subsequent recantation of the incident. They maintain, however, that an expert may not testify that an alleged victim's symptoms of PTSD are consistent with those exhibited by someone who has been sexually abused because such testimony lacks an objective scientific foundation. They assert that PTSD evidence regarding causation was improper because PTSD was not intended to be used as a forensic tool in a court of law. In addition, the defendants claim that such testimony amounts to improper evidence regarding the complain-

tunity to secure counsel of his own choice U.S.C.A. Const.Amend. 6.

3. Criminal Law §441.10(1)

When a court unreasonably denies defendant counsel of choice, denial can rise to level of a constitutional violation. U.S.C.A. Const.Amend. 6.

4. Constitutional Law §268.1(5)

Denial of an accused's right to counsel of his choice may so offend concept of the basic requirements of a fair hearing as to amount to a denial of due process of law U.S.C.A. Const.Amend. 6, 14

5. Criminal Law §441.10(1)

When an accused is financially able to obtain an attorney, choice of counsel to assist him rests ultimately in his hands and not in the hands of the state U.S.C.A. Const.Amend. 6.

6. Criminal Law §441.10(1)

While an accused's right to choose counsel to assist him at trial is an essential component of the Sixth Amendment right to assistance of counsel, such right is not absolute. U.S.C.A. Const.Amend. 6

7. Criminal Law §441.10(2)

When an accused seeks substitution of counsel in midtrial, he must show good cause such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict with his attorney in order to warrant substitution U.S.C.A. Const.Amend. 6.

8. Criminal Law §441.10(2)

Consideration of motions to substitute counsel in midtrial requires a balancing of accused's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice U.S.C.A. Const.Amend. 6

9. Criminal Law §441.10(1)

A trial court, acting in the name of calendar control, cannot arbitrarily and unreasonably interfere with a client's right to be represented by the attorney he has selected U.S.C.A. Const.Amend. 6

10. Criminal Law §593

Whether a continuance is appropriate in a particular case depends on the facts and circumstances of that case, with the trial judge considering the length of delay, previous continuances, inconvenience to litigants, witnesses, counsel and the court, whether delay is purposeful or is caused by the accused, the availability of other competent counsel, the complexity of the case, and whether denying continuance will lead to identifiable prejudice

11. Criminal Law §1166.11(5)

Evidence of unreasonable or arbitrary interference with an accused's right to counsel of his choice ordinarily mandates reversal without a showing of prejudice U.S.C.A. Const.Amend. 6

12. Criminal Law §556, 641.10(2)

Motions for continuance and order to substitute counsel are directed to sound discretion of trial judge and will be reversed only for an abuse of discretion.

13. Criminal Law §441.10(2)

Trial judge, after questioning competence of petitioner's counsel and provoking counsel into acts inconsistent with his duty of loyalty to his client, acted unreasonably in failing to heed petitioner's expression of dissatisfaction. U.S.C.A. Const.Amend. 6.

14. Criminal Law §441.13(1)

In order to obtain relief for ineffective assistance of counsel, an accused must show first that counsel's representation fell below an objective standard of reasonableness, and that counsel's performance prejudiced accused's defense.

15. Criminal Law §441.5, 441.13(1)

In assessing prejudice arising from alleged ineffective representation, question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt; however, when counsel labors under a conflict of interest, prejudice may be presumed

whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate." *Brown v. Craven* 424 F.2d 1166, 1169 (9th Cir. 1970).

There is no question in this case that there was a complete breakdown in the attorney-client relationship. By the time of trial, the defense attorney had acknowledged to the Court that Nguyen "just won't talk to me anymore." In light of the conflict, Nguyen could not confer with his counsel about trial strategy or additional evidence, or even receive explanations of the proceedings. In essence, he was "left to fend for himself." *United States v. Gonzalez*, 113 F.3d 1026, 1029 (9th Cir. 1997), in violation of his Sixth Amendment right to assistance of counsel. Nonetheless, the District Judge ignored the problems between Nguyen and his attorney, commenting that Nguyen's "strike" was not ground for a continuance, explaining to Nguyen that "the Federal Public Defenders provide very good representation to defendants," and remarking that he was "totally comfortable" with the public defender representing Nguyen. The issue in this case is the attorney-client relationship and not the comfort of the court or the competency of the attorney.

Finally, the District Judge commented that any problems with his decision not to grant a continuance for the substitution of counsel could be remedied on appeal by a challenge regarding the effective assistance of counsel. For a judge to maintain that the only solution to an attorney-client conflict is an appeal based on ineffective assistance is destructive of fundamental due process. By incorrectly limiting the defendant's arguments, the suggestion risks undermining the defendant's rights on appeal and on retrial after an appeal. See *Taylor v. Reno*, 164 F.3d 440, 446 (9th Cir. 1998) (addressing, but rejecting on the facts, the argument that the judges com-

ments might violate due process by lulling the defendant out of pursuing a particular challenge).

For these reasons, the District Court abused its discretion in denying a reasonable continuance for a substitute counsel to prepare for trial.

B

[8-10] Under the standards for denying a motion to substitute counsel, the District Court also erred. We review the denial of a motion for substitution of counsel for abuse of discretion. *United States v. Corona-Garcia*, 210 F.3d 973, 976 (9th Cir. 2000), cert. denied, 531 U.S. 898, 121 S.Ct. 231, 148 L.Ed.2d 165 (2000). In reviewing a denial of substitution of counsel, we consider (1) the timeliness of the motion, (2) the adequacy of the trial court's inquiry, and (3) the extent of conflict created. *Id.*

[11] With regard to timeliness, as mentioned above, the District Judge failed to adequately balance Nguyen's Sixth Amendment rights against any inconvenience and delay from granting the continuance. *Moore*, 159 F.3d at 1160. In fact, the District Judge does not even appear to have considered the length of delay that would have been necessary to substitute a new attorney. The mere fact that the jury pool was ready for selection or even that the jury was ready for trial does not automatically outweigh Nguyen's Sixth Amendment right.

[12] The District Judge also failed to conduct a sufficient inquiry into Nguyen's request. For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant "privately and in depth." *Moore*, 159 F.3d at 1160, and examine available witnesses. *Gonzalez*, 113 F.3d at 1028. The District Judge did neither here. Al-

Dewayne Seavestevan

District Court abused its discretion
in denying Mr. Ramirez an inquiry
into his dissatisfaction of his
counsel and motions, refusal to file his
proposed

WILSON v. MINTZES

Cite as 701 F.2d 375 (1983)

16. Criminal Law §41.13(6)

The two-prong performance prejudice *Strickland* test for determining effectiveness of counsel is not applicable to cases involving choice of counsel

17. Criminal Law §41.13(6)

Although there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt, such errors are cognizable without any showing of effect on the outcome of the proceeding when the right asserted is entitled to constitutional protection apart from objective fairness proceeding; therefore, the prejudice prong of *Strickland* has no applicability to counsel of choice cases since, unlike the right to counsel of choice, the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. U.S.C.A. Const. Amend. 6

18. Criminal Law §593, 441.10(2)

Prejudice to accused is but one factor to be considered by trial judge, and a continuance or substitution of counsel may properly be granted in absence of prejudice and may properly be denied despite its presence

19. Criminal Law §41.10(1)

Accused who has been improperly deprived of counsel of his choice need not show prejudice resulting from trial court's denial thereof in order to be entitled to relief U.S.C.A. Const. Amend. 6

20. Criminal Law §1163(2)

Prejudice is presumed only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance

21. Criminal Law §1163(2)

Even if a showing of prejudice were a prerequisite to reversal for denial of re-

quest for substitution of counsel, the conflict of interest between counsel and petitioner along with counsel's flat refusal to cross-examine a witness required a presumption of prejudice

John R. Minock (court-appointed), Detroit, Mich., for petitioner-appellant.

Frank J. Kelley, Atty. Gen. of Michigan, J. Peter Lark, Lansing, Mich., for respondent-appellee.

Before ENGEL, MARTIN and CONTIE, Circuit Judges.

CONTIE, Circuit Judge.

On May 4, 1984, we reversed the district court's denial of petitioner Roy Wilson's petition for a writ of habeas corpus and remanded to the district court with instructions that the writ be granted. *Wilson v. Mintzes* 738 F.2d 424 (6th Cir. 1984). The Supreme Court of the United States granted respondent Mintzes' petition for a writ of certiorari, vacated our judgment and remanded the case for consideration in light of *Strickland v. Washington*, 466 U.S. —, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).¹ For the reasons that follow, we reaffirm our earlier judgment.

I.

Petitioner Wilson contended in seeking a writ of habeas corpus that the trial judge's failure to grant a continuance to allow him to retain substitute counsel when he expressed dissatisfaction with the conduct of his counsel at trial deprived him of his sixth amendment right to counsel. We found that counsel's conduct at trial constituted good cause to warrant substitution of counsel and that Wilson was prejudiced by counsel's attempt to remove himself from the case in front of the jury and by his refusal to cross-examine the officer in charge of the investigation.²

1. *Mintzes v. Wilson*, — U.S. —, 105 S.Ct. 317 83 L.Ed.2d 255 (1984).

2. For a statement of the facts and procedural history of the case, see our earlier opinion at 733 F.2d 424.

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Circuit 13 F.3d 778 (9th Cir. 1994)

unwanted counsel, "represents" the defendant only through a tenuous and unacceptable legal fiction." *Paretta v. California*, 422 U.S. 808, 821 [95 S.Ct. 2525, 2534, 45 L.Ed.2d 562] (1975). In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition.

Id. at 1075 (quoting *Osborn*, 361 F.2d at 629); see also *Coyler v. Sullivan*, 446 U.S. 335, 349-50, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980) ("[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief."); *Holloway v. Arkansas*, 435 U.S. 475, 490-91, 98 S.Ct. 1173, 1181-82, 55 L.Ed.2d 426 (1978).

Nevertheless, the Supreme Court in fleshing out the contours of the Sixth Amendment right to counsel has held that it does not guarantee "a right to counsel with whom the accused has a 'meaningful attorney-client relationship.'" *Morris v. Slappy*, 461 U.S. 1, 3-4, 103 S.Ct. 1610, 1612-13, 75 L.Ed.2d 610 (1983); see *id.* at 13-14, 103 S.Ct. at 1617-18. To understand the dimensions of this limitation, one must look at the facts of that case.³

In *Morris*, an indigent defendant had a unilateral falling out with his attorney caused not by any identifiable objective misconduct by the attorney, but by (1) Morris's dissatisfaction with a switch from one public defender to another, (2) Morris's opinion that the new public defender had not had enough time to prepare for trial, and (3) by the second public defender's assessment that Morris had no "defense to [the] charges." See 461 U.S. at 8, 103 S.Ct. at 1614. Because of this unilateral falling out, Morris refused to participate in his own defense. In affirming the denial by the district court of Morris's petition for a writ of habeas corpus, the Court rejected Morris's claim that a defend-

ant has the right to a certain "rapport" with his attorney. *Id.*, see *United States v. Schaff*, 948 F.2d 501, 505 (9th Cir. 1991).

[6] Moreover, an indigent defendant does not have the right to "an attorney he cannot afford." *Caplan & Drysdale v. United States*, 491 U.S. 617, 624, 109 S.Ct. 2646, 2651, 105 L.Ed.2d 523 (1989) (quoting *Wheat v. United States*, 486 U.S. 153, 159, 108 S.Ct. 1692, 1697, 100 L.Ed.2d 140 (1988)).

III

A.

[7] If the Sixth Amendment itself protects an accused from a lawyer with a traditional conflict of interest, and from a lawyer who is asleep, completely disinterested, or so unprepared that his appearance is merely pro forma, surely it must protect the indigent from an appointed lawyer who calls him to his face a "stupid nigger son of a bitch" and who threatens to provide substandard performance for him if he chooses to exercise his right to go to trial. An indigent defendant may not be entitled to a meaningful relationship as described in *Morris*, but a verbal assault manifesting explicit racial prejudice and threatening to compromise the client's rights far exceeds and transcends the facts and holding in that case. In our judgment, such a verbal assault is irreconcilable with (1) the duty of loyalty owed a client by his attorney, (2) the responsibility of providing meaningful assistance, and (3) the role of "guiding hand" described in *Powell* by Justice Sutherland. All advice, assistance, and guidance provided after such an outburst would be fatally suspect, as would the "willfulness" of a defendant to follow the attorney's lead. Such a disrespectful and inappropriate eruption would signal and be tantamount to (unless somehow cured) a "total lack of communication" far exceeding the parameters of any duty on the part of counsel to deliver to his client a "pessimistic prognosis" of his legal position. *United*

2. In his opening brief Mr. Frazer's counsel relied heavily on our opinion in *Slappy v. Morris*, 449 F.2d 718 (9th Cir. 1971) without bringing to our attention that we were explicitly overruled by the Supreme Court on the point for which he cited it.

Not until the government cited the Supreme Court's overruling opinion did counsel acknowledge the subsequent history of this case. Counsel's use of precedent in this fashion is most disconcerting.

Verbal
Assault
Assistance
Fetally suspect

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my defense but like I said in the past, I've asked to fire him, I've asked to get a new attorney which I can't, I can't afford it I'm poor, I have no help from my family just basically to get my hygiene and that's it and-and also I, um, I asked for a new attorney, I asked for a private investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I asked for several motions which I don't know if they were, they were even filed or if they were denied, I've asked, uh, I don't know if Mr. Cosby I just feel like maybe I-I have a big mouth and I sit to-to open my big mouth and say things and I don't know if I made him angry or upset or frustrated or what I've done but for some reason I don't know if he's gonna lose this case because it's a weak case or if it's intentionally or accidental or I'm just paranoid or ...

DT: Mr. Ramirez.

AR: ... but-but something Your Honor for that

DT: The issues that you wanted to be on the record you've listed them and I think you've listed them well, uh, thank you for all the truth of the situations that-that you face, uh, and-and-and it's tough to understand everything even if you're in the system, but I think that you've made a record ...

AR Sorry Your Honor.

DT: ... and the Appellate Court will see that record and-and therefore that's-that's what you needed to do and that's what you've done.

AR Okay. Thank you Your Honor I had more, uh, uh, things to say but thank you for that time I'll-I'll just say them on my appeals, I had more things that I wanted to say but thank you.

DT: Okay thank you sir. Alright (9.25.58)

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1 say and you're saying some more stuff right now that is on the record. The part that I'm gonna
2 restrict is that you're not gonna go into this area at this juncture in this trial.

3 AR: It's-it's, uh, relevant to the case and also I didn't get asked about how, about my schooling, like I
4 thought it was maybe it was important to the Jury about how I was doing in school and before
5 how this led up to it and I didn't get asked about why I broke the window to my mom's
6 boyfriend's car, what happened that day, who was there, I didn't get asked, um, several things ...

7 DT: See those are not relevant to the issue that we are here about.

8 AR: How come they've used it in court? He brought it up. The prosecution said I broke a window
9 but it's not relevant? It's relevant if the prosecution used it but I can't explain why it's relevant
0 Your Honor and you all a very educated man and I'm a nobody and I'm real low, uh, low IQ but
1 I guess in my life and I feel like I'm not having a fair trial because if-if I would have known that
2 I didn't have to get asked a question about me being sexually assaulted by my neighbor and
3 (inaudible) I would have just said it myself but I just had respect for the courts and for you for
4 Matthew telling everybody I wasn't gonna just throw it out there like that.

5 DT: You're-you're ...

6 AR: But I don't feel it's fair.

7 DT: You have, you've explained this issue and you've been through psychological evaluations and
8 we've had two for sure ...

9 AR: Okay.

10 DT: ... did you explain that to them?

11 AR: Yes. Yes sir. Another thing, thank you for letting me speak, I greatly appreciate it and God
12 bless you all. I've let Maxine Schwartz know that I was sexually assaulted. It's on record, she

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1 knows. I've told her what happened by my neighbor, by my mom's boyfriend, I told Maxine
2 Schwartz that's why I was hurt that I didn't get to have that as my defense today and also ...

3 DT: And who is Maxine Schwartz

4 JC: She's the one, uh, the original determination wasn't competent.

5 AR: And also ...

6 JC: Psychologist

7 AR: Dr. Burness I'm not gonna say whether she asked me or not but like I said I was assaulted over
8 there and battered and they sent me back and found me competent which isn't, wasn't good, was
9 not prop-professional and also Dr. Fink I tried to explain this to Dr. Fink that I was sexually
10 assaulted and-and Dr. Fink stated well that doesn't have anything to do with your case. He said
11 your murdered somebody and that doesn't have nothing to do with your case and he said also he
12 said even if you were incompetent my job as working for the State of New Mexico is to find you
13 competent and whether you get to the hospital or not they're still gonna find you competent
14 because that's the job the State of New Mexico has and I said well I explained everything and I
15 was, I'm not get, I'm not, it's not fair and I think it's relevant.

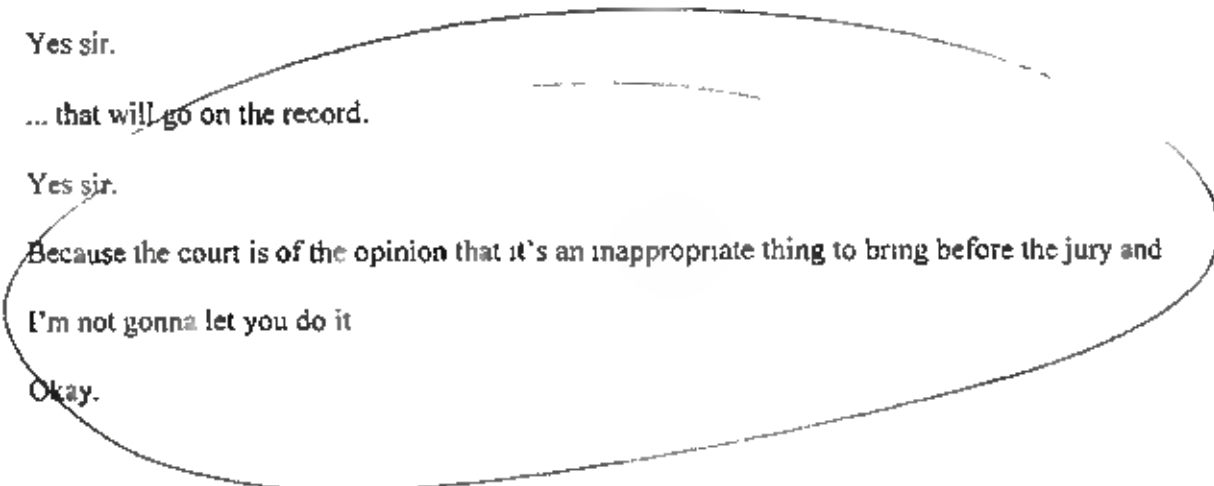
16 JC: Okay there is ..

17 AR: If your child was ever assaulted would you want ...

18 JC: Can-can we finish please? Go ahead but there is record that you discussed with psychologists
19 something about being sexually assaulted in the report and I hesitate to have to do this but in the
20 report the psychologist says that he's malingering and fabricating and that the allegations of
21 sexual abuse is I believe that her term, highly suspect. So it was brought up, it was discussed, it
22 was not, um, commented much upon except when the report that the person said because of his

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- 1 JC Well you're-you're getting your chance sir now.
- 2 AR I would like to speak.
- 3 JC You are. You're, just a second . .
- 4 DT Well I'll give you 5 minutes to tell the story.
- 5 AR I don't want him. I don't, huh?
- 6 DT I'm gonna give you 5 minutes to tell this story.
- 7 AR Tell what story?
- 8 JC About your sexual problems ...
- 9 DT That your sexual ...
- 10 AR Okay. I got 5 minutes
- 11 JC Sit back, sit back.
- 12 AR I'm not acting up Okay ...
- 13 DT Sit, sit for it.
- 14 AR I'm not, there ain't nobody, I'm peaceful like everybody else
- 15 DT They're just doing their job and you're, and you're gonna make a statement, I'm gonna give you
- 6 5 minutes and you need to understand that this is the statement ...
- 17 AR Yes sir.
- 18 DT ... that will go on the record.
- 19 AR Yes sir.
- 20 DT Because the court is of the opinion that it's an inappropriate thing to bring before the jury and
- 21 I'm not gonna let you do it
- 22 AR Okay.
- 

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 DT: It is highly suspect for sure in my opinion.

2 AR: I, uh ..

3 DT: And (inaudible) against you're done so say what you want to say.

4 AR: Okay Mr. Cosby stated that supposedly a psychologist/psychiatrist stated that I was malingering
5 or they didn't believe me which in my opinion when he said that, which it went against me and
6 on the record, okay if there's a psychiatrist/psychologist, Maxine Schwartz which I told and she
7 believed me, um, that would be relevant and that would help my case which would make it
8 allegedly true and what he said about somebody saying that I was malingering makes me look
9 bad but why would he say that Dr. Maxine Schwartz believed me when I told her about the
10 sexual abuse and it makes me right. And also about foster care okay I never told nobody, I was
11 embarrassed. The only person I told was my mother and about this I was about, when
12 (inaudible) done this to me he would give me beers so I started drinking with him and then later
13 on I drunk a lot of beers with him, and, um, I was 16 it was the summer time and, uh, he, uh,
14 tried to kiss me and I told him no and, uh, he got in my face and he threatened to-to punch me, he
15 threatened to hit me and I-I didn't want to get hit, I was scared. So I said okay. Then, uh, he
16 forced me to give him oral sex which I did, which only lasted maybe 2 to 3 minutes at the most
17 and then it was done, it was right in the living room, I was sitting on the couch, he was standing
18 in right in front of me and I did it and he told me not to say nothing but I told my mom and my
19 mom asked him, he denied it. Well then later on about a month later he-he did it again and I
20 told my mom and she said, uh, she was gonna call the cops and-and, um, they got in an argument
21 and I guess he unplugged the phone and they were talking and then my mom sent me to my room

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 and then nothing ever happened. My mom just said I talked to him, I talked to him and-and that
2 was it.

3 DT: (inaudible)

4 AR: And-and-and she told me that she said that she told him that if I ever said anything about him
5 hitting me or any sexual abuse that she was gonna press charges and that I was gonna give, I was
6 gonna have to tell the police and stuff, well not about that, well about Sam Size. I used to go
7 over there because he used to call me over there and when I was between junior high I used to go
8 over there and I always used to like to drink and smoke weed so in order to get beer, I would go
9 to him and I just went over there and I would drink and, um, I would get a beer or two and he'd
10 give me a beer or two and he tried to, he tried to get with me. He just asked for a hug and then
11 he grabbed my, I can't remember if he grabbed my penis and my butt or both and he tried to put
12 his lips on mine, I told him no back up, you know, and I-I ran away with the, with the beer and
13 then I-I ended up going back one more time and, um, I needed some more beers cause I was with
14 my friends and it was Sunday, I don't remember the date, it was summer time, I was 16, he gave
15 me, I went and I said hey man I-I need some beers and, um, I don't remember exactly what was
16 said but I know he gave me like 7 to 8 beers and he tried the same thing on me and he touched up
17 on me and that's assault, he grabbed my penis and my butt and everything and he always tried to
18 invite me over there but I was scared of him. The reason I was scared of Sam Size to go over
19 there was because he told me when I was a little kid, do not, he told me he said, um, cause I used
20 to hang out at the other neighbor's house and he used to just give me beer free, he wouldn't try
21 nothing on me or anything, he just gave me beer for free, just to hang out, smoke and, uh, Sam
22 told me I don't like him, you shouldn't be hanging out with him because he's always talking crap

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 about me, he says that I-I, uh, he-he's saying that I, uh, I can't, I don't want to say something
2 wrong but he said, and I ain't making this up because I seen it in discovery, this is exact what
3 happened. He told me from his mouth that Michael Morales was talking about him and said that
4 he raped or, uh, raped or had some kind of sex with two young males between 12 and 18 and
5 once he told me this I was really afraid of him because I thought he was gonna try to have sex
6 with me and I was real paranoid because he-he's a big man. So I'd be, I'd watch out for myself
7 but I know it's hearsay but Mike would tell me the same thing and that's why I believed it to be
8 true and whether I can testify to it or not, I mean that's the truth so let it be on the record and .

9 DT: Right.

10 AR: .. I just feel like, uh, I know whether you all are upset because I withdrew my plea but we
11 wouldn't be here in the first place if I wouldn't have got those extra two and a half years, it's a
12 big headache for me as well.

13 DT: Alright

14 AR: And, uh, sorry your Honor one more thing is that I feel like it would be fair because this is my
15 life and this is what happened and I, it is relevant. I've told plenty of people in mental health
16 since I've been locked up in prison about being sexually assaulted and they got it written down
17 and they said well we need to get you mental health and I've told them.

18 DT: Right.

19 AR: And-and Dr Burness ...

20 DT: I've got your story.

21 AR: She just ...

22 DT: I've got your story.

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 AR. I was beat up over there.

2 DT: The court, the court continues to be of the opinion that two things well after hearing the story
3 that it-it's still suspect and I'm not sure it'd be relevant

4
5 10/10/13 3:24:59 -3:25:49

6 UF. Well as of us, yeah because he had already been having all these issues where he was always
7 thinking somebody was after him. He would talk to himself, he would hear voices, he would.

RICKY: A white shirt

DAN: Tee shirt or pullover?

RICKY: Uh, pullover but it had colored stripes across it. No hat, no nothing. Nothing else.

DAN: Do you remember what kind of shoes he had on?

RICKY: Uh, I didn't ever- they looked just like tennis shoes to me. I guess.

DAN: Color?

RICKY: White tennis shoes. I didn't really.

DAN: You didn't really pay attention to his shoes.

RICKY: Pay attention to his shoes. I just seen him and it happened so quick, you know? But he was going towards- I mean- in the alley he was shoving like tucking his shirt in, or

DAN: He was running when he was doing that?

RICKY: No, he was fixin to start running.

DAN: Kay. Before he started running?

RICKY: Yeah. Right before he started to leave, he- get running. He was like, like he tucked his shirt in, or hiding- you know putting something up front right here. And then he left. That's the last I see of him. So I went back in.

DAN: So he was tucking something in the waistband of his pants?

RICKY: Yeah. And then, he took his, down the alley north, towards 7th Street and then . That's all I seen of him. That's all I seen of him. So I went back inside my building, by the time I walked up front- to my front doors .

DAN: He started running? Was he running?

RICKY: Well, not running- running. But he, you know.

DAN: Like jogging. Kay but, once he started running, was he jogging or just sprinting?

RICKY: Just a jog, yeah, just like a small jog. You know? But he was heading north and heading towards seventh street on the, at the alley. That's the direction that he was going.

✓

leading
no he was walking about
to run

only saw
not running

not running
leading

GRACE: Like, like a polo or something, you know? Not no buttons or anything else like that.

AGUILAR: Right like a tee-shirt

GRACE: I just took it in fast ... and ... and ah, but the green stripes go round

AGUILAR: Kay

GRACE: And ... and at that point I got scared, you know ...

AGUILAR: With, how much shorter was he then up the other guy?

GRACE: I think he was a just a little bit shorter.

AGUILAR: Okay

GRACE: I, I would say maybe the guy, I'm guessing ... I'm saying, maybe the taller one, maybe 5'7", 5'8"? I don't know it was so (inaudible 5 16)

AGUILAR: Okay. kay, but your saying the one that was doing the shooting had a green shirt on.

GRACE: yes.

AGUILAR: or a ~~shirt on~~ with green stripes

GRACE: It's a polo with big green stripes on it.

AGUILAR: Kay

GRACE: Looked like a polo to me, you know You know, like that type of material you know?

AGUILAR: Right do you remember

GRACE: It wasn't a tee shirt

AGUILAR: It wasn't a tee shirt? Do you remember what kind of pants he had on .. or?

GRACE: I don't know. I saw blue jeans but I don't know if it was short or ...

AGUILAR: Okay.

GRACE: Shorts or, or jeans

AGUILAR: What about age, would you say?

4

B. prior bad
acts

THIS PAGE

INTENTIONALLY

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ALL PAPERS FACTS, EXHIBITS,
 Record, documents
 EVIDENCES, CASES PERTINANT
 TO MY CASE. THANK YOU

B. Bad acts.
 ISSUES.

- ①. Evidence use of battery and assault
 OF A TRANSPORT OFFICER. IN TRIAL
 WHEN IT WAS KNOWN TO BE
 INADMISSIBLE.
- ②. Exhibit 110. rap song letter use to
 prove element of premeditation
 to prove 1st degree murder fact
 it talked about shooting people
 killing people.
3. OVER objection the State called
 a FIREARMS dealer to testify that
 DEFENDANT had tried to purchase
 A GUN FROM HIM. IN THE PAST
 TO SUPPORT ~~THE~~ PREMEDITATION.
4. The State introduced evidence that
 SOMEONE had broken a front
 WINDOW AT THE VICTIMS HOUSE
 AND THIS WAS ALLEGEDLY DONE
 BY PETITIONER TO SHOW MOTIVE.

prior bad acts
S. Another incident was introduced
to show intent and motive,
that is, that petitioner had
used his crutches to crack
his mother's window.

COPY

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v

No CR-2007-434

ALBERT RAMIREZ,


Defendant.

DESIGNATION OF EXHIBITS

Pursuant to Rule 12-212 NMRA, the Defendant designates the following exhibits:

1. State's Exhibits #1 - #110.

Respectfully submitted:



Jesse R. Cosby, Esq.
JESSE R. COSBY, P C
Attorney for Defendant
P O Box 3330
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(575) 625-0516

U.S. v. SOLIVAN

Cite as 937 F.2d 1146 (4th Cir. 1991)

1147

flame juror's emotions U.S.C.A. Const. Amend. 6, 14

cautionary instruction, however swiftly and forcefully given, can safely eradicate its effect. U.S.C.A. Const. Amend. 6

8. Criminal Law §723(3), 1171.1(6)

Prosecutor's appeal to community conscience in context of war on drugs and suggestion that drug problem facing jurors' community would continue if they did not convict defendant were so inflammatory in context that no charge could have sufficiently cured prejudice, and thus, statements constituted reversible error U.S.C.A. Const. Amend. 6

11. Criminal Law §730(1)

Both timing and firmness of trial court's admonition are relevant in evaluating whether admonition has been sufficient to mitigate prejudicial error resulting from admission of improper evidence or comment.

7. Criminal Law §1163(2, 3)

It is incumbent upon Government to demonstrate that constitutional error, resulting from admission of highly prejudicial evidence or comment, is harmless beyond reasonable doubt, if there is reasonable possibility that evidence or comment complained might have contributed to conviction, then such error cannot be harmless beyond reasonable doubt.

Louis DeFalaise, U.S. Atty., Lexington, Ky., Frederick A. Stine, V., Asst. U.S. Atty., Covington, Ky., for plaintiff-appellee

Robert Alan Rosenblatt, Miami, Fla. for defendant-appellant.

Before KEITH and MILBURN, Circuit Judges and CONTIE, Senior Circuit Judge

KEITH Circuit Judge

8. Criminal Law §1134(3), 1142

Result of harmless error analysis depends on circumstances of particular case determining whether error is reversible necessitates examination of entire record

Defendant-appellant, Rosalba Solivan ("defendant") appeals from her March 28, 1990, judgment and sentence resulting from the sale of cocaine. For the following reasons, we REVERSE

9. Criminal Law §730(14)

Curative instructions given by district court in trial on drug charges were insufficient and came too late to mitigate negative and highly prejudicial impact of prosecutor's appeal to community conscience, where remarks were among final arguments presented to jurors prior to their deliberation, admonition took place after 20 minute recess occurring immediately following prosecutor's improper statements, and admonition did not sufficiently convey to jury sense of judicial disapproval of remarks to dispel harmful impact of egregious statements. U.S.C.A. Const. Amend. 6

10. Criminal Law §730(1), 1171.1(2)

When isolated remarks are made in course of long trial and jury is given appropriate cautionary instruction designed to overcome any prejudice that may have been caused, error may be harmless, however, error may be so prejudicial that no

Terry and Lorraine Brown (collectively "the Browns") became Drug Enforcement Administration ("DEA") informants in July 1988, subsequent to Terry Brown's arrest for the purchase of one kilogram of cocaine from Pepe (defendant's former boyfriend) and defendant on March 8, 1988

On February 13, 1989, while in custody, the Browns began making a series of DEA controlled tape recorded, telephone calls to defendant. The first call concerned the delivery of three to five kilograms of cocaine to northern Kentucky and the price of the cocaine. During a subsequent telephone conversation, defendant informed the Browns that the price would be \$19,500 per kilogram of cocaine. The series of recorded telephone conversations, which took place over the following weeks, detailed defendant's involvement in the nar-

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:18:24 PM		JURY BEING SEATED IN BOX
1:19:33 PM		#7 WITNESS ROGER GRAU LT. WITH CLOVIS POLICE DEPT. CALLED BY MORRIS / SWORN / DEX
1:20:54 PM		THE MCU WAS ACTIVATED ON JULY 12TH, MADE SURE ALL THE PEOPLE WERE IN THE RIGHT POSITIONS, AND CRIME SCENE WAS BEING HANDLED
1:21:28 PM		SEARCH ITEMS OF CLOTHING IN THE BAG,
1:21:53 PM		WHAT WAS INSIDE THE BAG "PAIR OF SHORTS" IDENTIFICATION OF DENIM SHORTS
1:23:40 PM		WHAT DID YOU FIND WHEN YOU SEARCHED SHORTS
1:24:57 PM		IDENTIFICATION EXHIBIT 62 "BAG OF BULLETS FROM PANTS POCKET"
1:25:39 PM		OFFERS EXHIBIT 62 / ADMITTED
1:27:48 PM		IDENTIFICATION EXHIBIT 63 "PIECE OF NEWSPAPER FOR HOUSES TO RENT THAT CAME FROM BACK POCKET OF JEANS / OFFERS / ADMITTED
1:28:21 PM		IDENTIFICATION EXHIBIT 64 "WALMART RECEIPT FROM HIS PANTS"
1:28:50 PM		WHAT IS THE DATE ON RECEIPT, WHAT WAS PURCHASED 22 CAL AMMO
1:29:24 PM		OFFERS EXHIBIT 64 / ADMITTED
1:29:33 PM		IDENTIFICATION EXHIBIT 65 "NM ID CARD FOUND IN HIS POCKET"
1:29:59 PM		OFFERS EXHIBIT 65 / ADMITTED
1:30:06 PM		IDENTIFICATION EXHIBIT 66 "FOOTLOCKER RECEIPT"
1:30:56 PM		OFFERS EXHIBITS 66 / COSBY OBJECTS / COURT
1:31:31 PM		ARE YOU AWARE OF WHAT WAS ON THERE BEFORE
1:31:41 PM	COSBY	OBJECTS / COURT RECEIVES MEMORY IS SUFFICIENT
1:32:01 PM		IDENTIFICATION EXHIBIT 67 "FOOTLOCKER RECEIPT" OFFERS
1:32:34 PM	COSBY	OBJECTS / COURT UNDERSTANDS OBJECTION ADMITTED
1:34:30 PM		IDENTIFICATION EXHIBIT 68 "PHOTO OF CONTENTS" OFFERS
1:35:08 PM	COSBY	OBJECTS, TOOTHBRUSH NOT IN EVIDENCE" COURT OVERRULES / ADMITTED
1:37:08 PM		IDENTIFICATION OF EXHIBIT 69 "PHOTO OF SAME ITEMS"
1:37:45 PM		MOVES EXHIBIT 69 / SAME OBJECTION / ADMITTED
1:37:57 PM		IDENTIFICATION EXHIBIT 70 "PHOTO ID CARD" MOVES / ADMITTED

301 Henry Credibility of Evidence not put into evidence
 date on Receipt presented as miscellaneous

Admitted to evidence
 1:27:48 PM

ST VS ALBERT RAMIREZ GR-07-434

COURTROOM ONE

Time	Speaker	Note
11:51:38 AM	CO BY	DEX - DO YOU HAVE THE FORM WITH YOU, NO
11:52:10 AM		IT WAS THROWN AWAY, A CRIME WAS NOT COMMITTED. DID NOT DO A POLICE REPORT, THERE WAS NO CRIME ONLY HAVE DISPATCH RECORDS JUNE 20TH 2007, READ THE NAME OFF THE FORM
11:53:23 AM		DOES NOT RECALL WHAT KIND OF GUN HE WAS TRYING TO BUY
11:53:37 AM		WITNESS EXCUSED
11:53:58 AM		NOON RECESS REPORT AT 1:30 P M
1:30:14 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
1:30:35 PM	CHANDLER	THE STATE ANTICIPATES CALLING TWO TO THREE WITNESSES, WILL PROBABLY BE DONE WITHIN AN HOUR DON'T BELIEVE ANY OF HIS WITNESSES ARE FACTUAL WITNESSES, HIS WITNESSES ARE GOING TO ATTEMPT TO TESTIFY HEARSAY ETC.
1:31:52 PM	COSBY	JOSE RAMIREZ HIS BROTHER REGARDING RELATIONSHIP WITH HIS STEPFATHER, FURTHER STATES WITNESSES TO BE CALLED AND WHAT THEY WILL TESTIFY ABOUT
1:34:13 PM	CHANDLER	
1:35:06 PM	DFT	STATES HE HAS BEEN HEARING VOICES TELLING HIM TO KILL HIMSELF, CUT HIS WRISTS ETC. OTHER ISSUES THAT MAKE HIM NOT WANT TO LIVE,
1:36:36 PM	COURT	KEEP DOING GOOD, YOUR LAWYER IS NOT MAD AT YOU
1:36:47 PM	CHANDLER	ASKS DEFENSE TO MAKE WITNESSES AVAILABLE TO INTERVIEW
1:37:51 PM	COURT	THE ABILITY OF MR COSBY TO MAKE AVAILABLE MAY NOT BE WITHIN HIS POWER. I DON'T KNOW IF I CAN DO THAT, THESE PEOPLE HISTORICALLY ON YOUR WITNESS LIST
1:38:39 PM	COSBY	HE ASKED TODAY TO PRODUCE
1:38:51 PM	COURT	DO THE BEST YOU CAN TO TALK TO THEM
1:39:58 PM	COSBY	WITNESSES ARE TRYING TO COORDINATE WORK
1:41:19 PM	DFT	COMMENTS
1:41:58 PM		JURY BEING SEATED IN BOX
1:42:33 PM		#19 WITNESS KEVIN STREINE CALLED BY CHANDLER / SWORN / DEX
1:43:46 PM		FIREARM EXAMINER, BULLETS
1:44:10 PM		EDUCATIONAL BACKGROUND
1:45:21 PM	COSBY	NO OBJECTION AS TO EXPERT
1:45:29 PM	COURT	QUALIFIED AS AN EXPERT
1:45:43 PM		DIFFERENT TYPE FIRED PROJECTILE
1:49:47 PM		RECEIVED FOUR ITEMS 108 - 111

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:50:11 PM		DETERMINATION OF TYPE OF BULLETS "22 CALIBER"
1:50:30 PM		WHAT DOES COPPER WASH LEAD BULLETS
1:51:50 PM		NOT ABLE TO FIND ENOUGH MARKINGS, ON BULLETS
1:52:11 PM		BULLETS WERE SENT TO HIM VIA OMI "OFFICE OF MEDICAL INVESTIGATOR"
1:52:35 PM		IDENTIFICATION EXHIBIT 102B "PACKAGE HAS HIS INITIALS ON IT AND DATE, ITEM 610 WAS NOT THE ONE HE WAS ABLE TO IDENTIFY"
1:54:23 PM		HAS NO OPINION AS TO WHO FIRED THE BULLETS, SIMPLY EXAMINED BULLETS
1:54:42 PM		IDENTIFICATION EXHIBIT 82 "LIVE ROUNDS OF COPPER WASH BULLETS"
1:55:30 PM	COSBY	XEX - WHAT IS A JACKETED BULLET "IT IS A HEAVIER THICKER MATERIAL" HE TOLD US THEY WERE JACKETED
1:56:23 PM	CHANDLER	OBJECTS
1:56:27 PM	COSBY	THE BULLETS HE RECEIVED WERE COATED OR WASHED THEY WERE NOT JACKETED THEY HAD COPPER WASH
1:57:09 PM		TWO OF THE THREE BULLETS HE SAW ARE CONSISTENT WITH A 22 LONG RIFLE,
1:57:55 PM		THERE ARE A NUMBER OF CARTRIDGES WITH THE 22 CARTRIDGE FAMILY THE LONG AND SHORT BULLETS ARE IDENTICAL
1:58:30 PM		WEIGHT OF BULLETS
1:59:08 PM		WEIGHT OF BULLETS DOES NOT SAY ON THE REPORT
1:59:30 PM		REFERS TO HIS NOTES FOR 608 36 3 GRAINS, FOR 609 37 0 GRAINS
2:00:00 PM		FOR 610 32 6 GRAINS, 611 WAS 28 1 GRAINS
2:00:25 PM		NO COMMENTS ABOUT WHAT OMI DID,
2:00:48 PM		HOW MANY GRAINS EQUAL ONE POUND "DOES NOT KNOW THAT IS WHY HE HAS A CALCULATOR"
2:01:25 PM		THESE BULLETS WAS NOT ABLE TO DISCERN IF THERE WERE ANY RIGHT OR LEFT TURN
2:03:46 PM		ITEMS 608 & 609 HAD WEIGHTS CONSISTENT AND ONE DID NOT
2:05:40 PM		BULLETS OMI SENT YOU WERE SAME MANUFACTOR AS THE ONE IN THE EXHIBIT
2:05:59 PM	CHANDLER	REFERS TO EXHIBIT 102A - YOU WEIGHED THAT WHAT IS THE DIFFERENCE BETWEEN 28 AND 28.1 GRAINS, DOES NOT KNOW WHAT PROCEDURES OMI USES
2:08:10 PM		YOU HAVE BEEN QUALIFIED AS AN EXPERT IN THIS CASE, DIFFERENCE BETWEEN COPPER JACKETS AND COPPER WASH

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:11:09 PM	COSBY	JOSIE CASILLAS WAS SERVED, LOPE CASILLAS WAS SERVED, AND JOSE RAMIREZ WERE SERVED TO APPEAR, ASKS COURT TO FILE RETURNS OF SUBPOENA'S, MY CLIENT AS EXPRESSED A REQUEST ASKS TO ALLOW TO SPEAK WITH HIS CLIENT FOR A COUPLE OF HOURS AND TO RECESS TILL THE MORNING TO HAVE WITNESSES HERE
3:13:27 PM	COURT	WE WILL BE IN RECESS TILL 9 AM,
3:13:35 PM	CHANDLER	MR. RAMIREZ WAS TRIED ON AUGUST 27, 2013, HIS CLIENT TOOK THE STAND THERE AND HE WAS CONVICTED, IF THEY OPEN THE DOOR THAT THERE IS A MENTAL HEALTH ISSUE, THEY WAIVE THE CONFIDENTIALITY ETC
3:14:57 PM		WE WILL BE CALLING REBUTTAL WITNESSES WITH REGARDING TO HIS COMPETENCY AND MENTAL HEALTH
3:15:15 PM	COURT	WE WILL LEAVE IT AT THAT, I DON'T KNOW THE ANSWER TO THAT,
3:15:40 PM	CHANDLER	IF HE IS OBJECTING TO THAT
3:15:54 PM	COSBY	RESPONDS, AS FAR AS THIS JUDGMENT, THIS CASE IS FROM BATTERING TRANSPORT OFFICERS, WE WAIVED JURY IT WAS A BENCH TRIAL, HE HAS ALREADY SERVED HIS TIME,
3:17:26 PM	CHANDLER	WHEN DFT TAKES STAND I HAVE THE RIGHT TO IMPEACH REGARDING CONVICTION
3:17:44 PM	COSBY	RESPONDS, AN EVENT THAT HAPPENS WHEN HE IS IN CUSTODY
3:18:57 PM	COURT	WILL MAKE DECISION IN THE MORNING, BRING JURY IN
3:20:17 PM		JURY SEATED IN BOX
3:20:54 PM	COURT	INSTRUCTS JURORS THAT THEY WILL BE EXCUSED TILL 9AM
3:21:36 PM	OFF RECORD	
3:22:22 PM	CHANDLER	HAS A COPY OF THE JURY INSTRUCTION
3:22:42 PM	COSBY	PRESENTS HIS INSTRUCTIONS TO COURT
3:23:09 PM	RECESS	

Barry ref. BARRACTS

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3 25 55 PM	CHANDLER	DO YOU KNOW WHERE DEBRA RAMIREZ IS "NO"
3 26 15 PM		WITNESS EXCUSED
3 27 18 PM		#3 WITNESS LUPE CASILLAS CALLED BY COSBY/ SWORN / DEX
3 27 55 PM		SHE IS ALBERT'S AUNT
3 28 11 PM		ALBERT LIVED WITH HER A WEEK OR TWO BEFORE HE WENT BACK HOME , IN 2007
3 28 41 PM		IT WAS A WEEK TO 10 DAYS BEFORE THE SHOOTING. HE WANTED TO COME TO LIVE WITH ME TO DO SOMETHING DIFFERENT, LIVED WITH ME A MONTH TO A MONTH AND A HALF, WHEN HE LEFT, DO YOU KNOW WHY
3 29 17 PM		HE LEFT I CALLED BY SISTER, HE SAID I AM GOING TO GO, WHAT WAS HIS PHYSICAL SITUATION,
3 30 05 PM		WHEN HE LEFT DID HE HAVE ANYWHERE TO GO, MY SISTER PICKED HIM UP "MY SISTER DEBRA"
3 30 43 PM		WHEN YOUR SISTER PICKED HIM UP ELADIO DID NOT COME WITH HER, SHE DID NOT KNOW ABOUT TRESPASS
3 31 11 PM		ELADIO AND HER SISTER OWNED THAT HOME, SHE TOOK HIM HOME WITH HER
3 31 59 PM		THEY CALL ALBERT "BETO" IT IS SHORT FOR ALBERT
3 32 29 PM		DID SHE SEEM TO HAVE ANY TYPE OF ANGER TOWARD'S ALBERT
3 33 12 PM		WHEN ALBERT CAME BACK HOME , HE WOULD TALK TO A MIRROR <i>MENTAL ILLNESS</i>
3 33 53 PM		WAS HE ABLE TO RUN AROUND,
3 34 19 PM		DID YOU KNOW ABOUT \$500 HE RECEIVED FROM HIS FATHER
3 35 11 PM		HE NEVER TOLD HER HE WAS LOOKING TO KILL MR ROBLEDIO
3 35 24 PM	MORRIS	XEX - YOU WERE NOT AT DEBRA'S HOUSE JULY 12, 2007
3 35 57 PM		WE WOULD TALK ABOUT ONE DAY YEAH, ONE DAY NO
3 36 26 PM		WHERE IS DEBRA TODAY "I HAVE NO IDEA, I AM FROM ROSWELL"
3 36 43 PM		WITNESS EXCUSED
3 36 53 PM		DEFENSE RESTS
3 37 33 PM	COURT	READS RECESS INSTRUCTION
3 38 08 PM	OFF RECORD	
4 32 14 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY.

10/10/2013

15 of 16

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
11 12 30 AM		AMOUNT OF POPULATION ON EARTH ACTUALLY 7 BILLION
11 13 41 AM		IDENTIFICATION EXHIBIT 108, "LABATORY REPORT"
11 14 04 AM		OFFERS EXHIBIT 108 / COSBY OBJECTS /
11 14 27 AM	COURT	LET ME SEE REPORT
11 14 52 AM	CHANDLER	IT IS NOT A POLICE REPORT TESTIFIED BASED ON REPORT
11 15 06 AM	COURT	ADMITTED SUBJECT TO OBJECTION OF DEFENSE
11 15 24 AM	COSBY	XEX - WHAT IS YOUR DEGREE
11 16 06 AM		DO YOU KNOW ANYTHING HOW INDEPENDENT VARIABLES
11 17 23 AM		IT THERE AN ASSUMPTION MADE BY DNA PEOPLE THAT THERE IS 50/50 CHANCE THAT IT WILL MATCH
11 17 54 AM		HOW DO YOU DETERMINE SW HISPANIC,
11 18 28 AM		IS THERE A DIFFERENCE BETWEEN SW HISPANIC OR SE HISPANIC
11 18 42 AM		ITEM 202 THE RED SHIRT, I KNOW YOU DID NOT FIND BLOOD, WAS THERE OTHER SOURCES OF DNA BESIDES BLOOD
11 20 18 AM		ONLY WORK FOR LAW ENFORCEMENT, TO ASSIST IN THEIR INVESTIGATIONS
11 21 05 AM		WHO CONTROLS WHAT YOU ARE LOOKING FOR, THE POLICE ONLY LOOK FOR WHAT THEY ARE ASKED TO LOOK FOR
11 21 42 AM	CHANDLER	OBJECTS CALLS FOR SPECULATION
11 22 04 AM	COSBY	YOU CAN'T TELL THIS JURY WHO'S SHIRT IT IS
11 22 23 AM		REGARDING THE RED SHOES FOUND, HOW MANY SPOTS FOUND ON RIGHT SHOE 3 SPOTS
11 23 05 AM		HOW MUCH YOU NEED TO DO A DNA ANALYSIS
11 25 08 AM		DID YOU CHECK RED TENNIS SHOE TO SEE WHO OWNED IT, NO JUST ASKED TO LOOK FOR BLOOD
11 25 28 AM		REGARDING THE LEFT TENNIS SHOE
11 25 41 AM		YOU DESCRIBED BLACK DENIM SHORT, WHY DOES YOUR REPORT SAY BLUE
11 26 41 AM		LITTLE BIT OF BLOOD ON ZIPPER AREA
11 27 14 AM	CHANDLER	OBJECT TO CHARACTERIZATION IT WAS NOT ZIPPER
11 27 33 AM	COSBY	IT WAS ON PIECE OF MATERIAL THAT COVERS ZIPPER,
11 28 11 AM		WHY TOOTHBRUSH WAS TESTED FOR NON BLOOD, TOOK IT UPON YOURSELF TO DO THE NON BLOOD
11 29 43 AM		211 WAS NOT TESTED FOR BLOOD
11 29 49 AM		YOU TESTED SIX SWABS, WHY DID YOU NOT GET ALL SWABS THERE WERE 20 BOXES "DO NOT KNOW"

ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
11:30:37 AM		DIRTY WHITE SOX, HAVE TESTIMONY THAT THERE WAS A RED MARK ASSOCIATED WITH A BLISTER
11:32:19 AM		REFERS TO EXHIBITS B1 & 82, 74 & 75
11:34:18 AM		COULD NOT TELL IF THEY WERE ALBERT'S SOX
11:34:33 AM		FINGERNAIL CLIPPINGS FOUND HIS OWN MATERIAL
11:34:45 AM	CHANDLER	RDEX - WHEN FINISHED WITH DNA TESTING WHAT DO YOU DO WITH THOSE ITEMS
11:35:42 AM		BENCH CONFERENCE STATE V. DURAN
11:36:30 AM	CHANDLER	THOSE ITEMS ARE RETURNED IN A MANNER WHERE OTHER AGENCIES CAN TEST THEM
11:36:49 AM		WITNESS EXCUSED
11:38:56 AM		#17 WITNESS CRIMSON MAES CALLED BY CHANDLER / SWORN / DEX
11:40:14 AM	COSBY	OBJECTS TO LISTEN TO PHONE CALL
11:40:28 AM	CHANDLER	WILL YOU RECALL IF I REFRESH YOUR MEMORY
11:41:26 AM		PLAY TO REFRESH HIS MEMORY
11:43:44 AM		DOES NOT RECALL IT IF IT WAS ME, I HAVE BEEN GOING THRU ALOT OF OTHER PROBLEMS, I CANNOT RECALL ANY OF THIS STUFF
11:44:48 AM	COSBY	OBJECTS TO HIM
11:45:08 AM	COURT	COUNSEL HAS MADE HIS OBJECTION
11:45:15 AM	CHANDLER	DO YOU RECALL THE DETECTIVE ASKING YOU IN 2007
11:45:28 AM		I DO NOT RECALL, I DON'T REMEMBER, DOES NOT RECOGNIZE DAN AGUILAR
11:46:08 AM		DO YOU KNOW WHERE RAGS TO RICHES IS, WHO IS BAM BAM
11:46:44 AM		WITNESS EXCUSED, SUBJECT TO RECALL
11:47:37 AM		#18 WITNESS JOHNATHON MARK HOWARD CALLED BY CHANDLER / SWORN / DEX , CERTIFIED POLICE OFFICER
11:48:09 AM		SUSPICIOUS CIRCUMSTANTIAL CALL RESPONDED TO CROSSHAIR'S GUN STORE AT 11:52 AM
11:49:22 AM		MET WITH DENNIS FITE,
11:49:38 AM	COSBY	HE HAS ALREADY TESTIFIED
11:49:52 AM	COURT	IT IS HEARSAY
11:50:04 AM	CHANDLER	IT IS NOT THE TRUTH OF THE MATTER TO PROVE
11:50:16 AM		WHAT WAS MR FITES CALL ABOUT , INDIVIDUAL WHO FILLED OUT PAPERWORK WAS ALBERT RAMIREZ
11:50:59 AM		NO CRIME WAS COMMITED AND NO GUN WAS PURCHASED, COULD NOT FIND HIM ANYWHERE, NOT AGAINST LAW TO ATTEMPT TO BUY A FIREARM AT THAT AGE

10/9/2013

10 of 15

ST, VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:15:48 PM		DO NOT HAVE ANY PROOF THAT YOUR CLIENT WAS TALKING ABOUT GUN
3:16:28 PM		YOU SAID YOU SAW BLISTERS ON BOTTOM'S OF HIS FEET DID YOU TREAT THE BLISTERS, "NO"
3:17:07 PM		PHOTO'S OF HIM IN HIS UNDERWEAR WERE TAKEN IN THE JAIL
3:18:40 PM		GRAFFITI IN JAIL
3:19:08 PM		IF A PERSON IN JAIL HAS TO BE RECORDED WHEN MAKING A CALL
3:19:42 PM		WHO IS THE PERSON HE WAS CALLING ON SECOND CALL "DO NOT KNOW"
3:20:16 PM		DID NOT CALL TO FIND OUT WHO THIS PERSON WAS
3:20:37 PM		FINDING CLOTHING 3 DAYS AFTER THE FACT
3:21:46 PM		REFERS TO HIS POLICE REPORT
3:22:49 PM		NOTE FROM JURY
3:23:21 PM	COURT	DOES NOT THINK QUESTION IS APPROPRIATE
3:23:34 PM	COSBY	REFERS TO EXHIBIT 8 "ARIAL PHOTO"
3:28:22 PM		HE NEVER WORKED THE SCENE
3:26:46 PM		REFERS TO EXHIBIT 58
3:28:06 PM	CHANDLER	RDEX - REFERS TO EXHIBIT 8
3:32:56 PM		IDENTIFICATION EXHIBIT 85
3:33:25 PM		IDENTIFICATION EXHIBIT 86 "
3:34:28 PM	COSBY	OBJECTION MISMARKED
3:34:37 PM	CHANDLER	WHO'S CLOTHING IN BAGS
3:35:16 PM		DID NOT FIND ANY EVIDENCE THAT NEEDED TESTING BUT HE COLLECTED, SUBJECT TO XEX MOVES FOR ADMISSION EXHIBIT 85 & 86
3:36:09 PM	COSBY	RXEX - TELL ME WHY EXHIBIT 85 IS MARKED OUT,
3:37:29 PM		EXPLAINS WHEN ARE AT A SCENE USE A DESIGNATOR
3:38:33 PM		JURORS QUESTION
3:39:06 PM	CHANDLER	RDEX - WHEN ASKED IF THERE WAS A RED MARK
3:39:54 PM	COSBY	RXEX - REFERS TO EXHIBIT 8
3:40:40 PM	CHANDLER	STIPULATE THAT JALISCO'S IS NOT INVOLVED
3:41:04 PM	COSBY	SCENE OF THE SHOOTING, CONTINUE TO REFER TO EXHIBIT 8
3:42:50 PM		WITNESS EXCUSED
3:43:43 PM		#5 WITNESS ANTONIO BOSQUE RECALLED BY CHANDLER
3:44:06 PM		WHO HE LISTENED PHONE CALL WITH, DID YOU HEAR
3:44:34 PM	COSBY	OBJECTS UNLESS HE IS CERTIFIED

ST, VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:45:19 PM	COURT	APPROVED HIS TRANSLATION RIGHT OR WRONG
3:45:40 PM		TRANSLATES WHAT ALBERT WAS SAYING ON PHONE CALL
3:47:17 PM	COSBY	WHERE IS THE REST OF THE CALL, WHAT DID THE AUNT SAY
3:47:47 PM		MAINLY FOCUSED ON WHAT RAMIREZ SAID
3:49:17 PM		WITNESSED EXCUSED
3:49:55 PM		#10 WITNESS RAFAEL AGUILAR CALLED BY MORRIS / SWORN / DEX
3:50:26 PM		MADE CONTACT WITH DFT ON APRIL 22ND, IDENTIFICATION OF DFT IN COURTROOM
3:51:28 PM		ADDRESS RESPONDED TOO, 512 W 6TH ST, WHO WAS THERE WHEN YOU ARRIVED ALBERT RAMIREZ AND MR ROBLEDO
3:52:22 PM		SPOKE WITH MR RAMIREZ AND ISSUED A CRIMINAL TRESPASS FOR THAT ALBERT NOT
3:53:04 PM		OFFERS EXHIBIT 55 "CRIMINAL TRESPASS"
3:53:09 PM	COSBY	OBJECTS / COURT ADMITS
3:54:11 PM	COSBY	XEX - WHO OWNS THE PREMISES AT 512 W 6TH DID YOU CHECK WHO OWNED IT, "NO"
3:55:29 PM		SHOWS PLATEAU WIRELESS DOCUMENT, WHO WAS LIVING THERE 8/21/06
3:57:08 PM		REFERS TO EXHIBIT 56 "PADLOCK ON BEDROOM DOOR"
3:57:51 PM		HE DOES NOT KNOW ON THE DAY OF THE SHOOTING
3:58:12 PM		HOW OLD WAS MY CLIENT
3:59:41 PM		NOT SURE HOW LONG HE WAS LIVING THERE,
4:00:16 PM	MORRIS	RDEX - DID ELADIO TELL YOU WHAT DEBRA SAID SHE DID, NOT WANT HIM AT THE HOUSE
4:01:27 PM		WITNESS EXCUSED
4:01:47 PM		#11 WITNESS DARYL RICE CALLED BY MORRIS / SWORN / DEX
4:02:38 PM		WHAT HAPPENED ON MAY 31ST 2007, HOW YOU CAME IN CONTACT WITH ALBERT RAMIREZ
4:03:33 PM		REFRESH MEMORY BY SEEING REPORT
4:03:49 PM		DEBRA RAMIREZ WAS UPSET, SHE STATED THAT HER SON ALBERT HAD BUSTED THE WINDOWS OF CAR
4:04:15 PM	COSBY	OBJECTS
4:04:30 PM		IT WAS THE CAR BELONGING TO HER BOYFRIEND
4:04:57 PM		DID YOU EVER RECIEVE AN ESTIMATE FOR REPAIRS "YES FROM GLASS DOCTOR"
4:05:37 PM		ASKED ALBERT WHAT HAPPENED HE SAID I GOT MAD
4:06:29 PM	COSBY	XEX - WHAT DATE WAS YOUR REPORT MAY 31, 2007
4:07:28 PM	MORRIS	STIPULATE HE WAS 18 YEARS OLD

be admissible in evidence against such person in any criminal proceeding on any issue other than that of the person's sanity, ability to form specific intent or competency to stand trial."

- 5 The testimony of Dr Burness is not admissible unless and until the defendant presents a claim of lack of specific intent or insanity to the jury.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any statements made by defendant to Dr Burness at trial and further relief as the Court deems just and proper

Respectfully Submitted,

HUGH W DANGLER
CHIEF PUBLIC DEFENDER

By: Brett J Carter
BRETT J CARTER
District Public Defender
Clovis District Office
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Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE

Brett J Carter
PUBLIC DEFENDER DEPARTMENT

RP 269

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

FILED
CLERK
FBI
COUNTY NM
JAN 13 PM 3:34

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

CLERK
FBI
COUNTY NM
JAN 13 PM 3:34
434

ALBERT RAMIREZ,

Defendant

DEFENDANT'S MOTION TO EXCLUDE THE INTRODUCTION OF ALL
PHOTOGRAPHS OF THE DECEASED AT TRIAL

Defendant Albert Ramirez, through counsel, requests this Court to exclude the State from offering all photographs of the deceased at trial wherein the following is shown.

1. The defense believes that the State will attempt to introduce photographs of the deceased, that were taken at the hospital and at the autopsy
2. They are twenty five photographs of the deceased that were taken at the hospital. The photo's depict a large amount of blood and extremely prejudicial to the defendant. The photographs taken at the hospital of the victim depict the victim unclothed with the exception of a small towel covering his private parts. The cause of death is not in dispute and the only reason to introduce the photographs is to appeal to the emotions of the jury and prejudice the jury against the defendant
3. Photographs taken at the autopsy are *per se* prejudicial to the defendant, and any evidence they provide of the alleged crime is cumulative and more prejudicial than probative

RP 270

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL. SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE/ BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION.
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT.
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL.
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

1 cross-examining Defendant about previous acts of violence. Therefore, the State
2 argues that the evidence was properly admitted to show motive and pattern of conduct.

3 (45) When a district court's evidentiary ruling is properly preserved for review, we
4 examine the ruling under an abuse of discretion standard. *See State v. Flores*, 2010-
5 NMSC-002, ¶ 25, 147 N.M. 542, 226 P.3d 641. "An abuse of discretion occurs when
6 the ruling is clearly against the logic and effect of the facts and circumstances of the
7 case." *Id.* (internal quotation marks omitted). We will not say that the district court
8 "abused its discretion by its ruling unless we can characterize it as clearly untenable
9 or not justified by reason." *Id.* (internal quotation marks and citation omitted).

10 **1. Evidence of the trespass order, broken windshield, and broken window**

11 (46) First, Defendant argues that the court improperly admitted testimony about a
12 "no trespass" order Robledo had issued to Defendant, in violation of Rule 11-404.
13 The State responds that evidence regarding the "no trespass" order was relevant and
14 admissible because it demonstrated a pattern of conduct toward Robledo from which
15 the jury could infer that Defendant acted with deliberate intention to kill Robledo. In
16 addition, the State argues that Defendant did not object to testimony about the order
17 at trial only to the admission of the actual trespass order.

1 (47) At trial, the prosecution sought to elicit testimony that three months prior to the
2 murder, Robledo had obtained a criminal trespass notice barring Defendant from
3 returning to the home. The district court had previously ruled, prior to trial, that
4 evidence of the no-trespass order issued against Defendant by Robledo was admissible
5 as it was relevant to proving deliberate intent. During trial, defense counsel objected
6 to the admission of the trespass order. The court, finding that testimony about the
7 order was admissible as to motive, overruled the objection.

8 (48) Second, Defendant argues that the court improperly admitted testimony about
9 a prior incident involving a broken windshield. The State argues that evidence
10 regarding the broken window was relevant and admissible because it demonstrated a
11 pattern of conduct toward Robledo from which the jury could infer that Defendant
12 acted with deliberate intention to kill Robledo.

13 (49) At trial, the prosecution sought to admit evidence that approximately one
14 month before the killing, Defendant broke the windshield of Robledo's car because
15 he "got mad." The defense objected to the testimony at trial regarding the broken
16 windshield, claiming it was "uncharged conduct." The district court allowed the
17 testimony finding that it demonstrated Defendant's pattern of conduct toward
18 Robledo.

1 (50) Third, the court admitted testimony about a police investigation of a broken
2 window at Robledo's house, although the court did not allow the witness to testify as
3 to who had broken the window. The State argues that Defendant failed to preserve
4 any argument regarding the broken window because he did not move to have the
5 testimony stricken after the district court sustained the objection.

6 (51) At trial, the prosecution sought to introduce testimony that a month before the
7 killing, Defendant's mother had filed a police report after Defendant had broken the
8 front window of Robledo's home when no one would answer the door. The
9 prosecutor asked the responding officer if he knew who had broken the window.
10 Defense counsel objected, arguing that the responding officer's testimony as to who
11 broke the window was inadmissible hearsay testimony and violated Defendant's
12 confrontation rights. The court sustained the objection. Despite the limitation on the
13 prosecution, the Defendant subsequently testified on cross-examination that after no
14 one answered the door, he had broken the window by knocking on it as it was
15 "flimsy." On appeal, Defendant argues that all of the testimony about the broken
16 window, including the filing of the police report, was improper.

17 (52) "Evidence of a crime, wrong, or other act is not admissible to prove a person's
18 character in order to show that on a particular occasion the person acted in accordance

1 with the character." Rule 11-404(B)(1) NMRA. However, "[t]his evidence may be
 2 admissible for another purpose, such as proving motive, opportunity, intent,
 3 preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule
 4 11-404(B)(2). *It was brought in as evidence*

5 (53) The procedure for admitting evidence under Rule 11-404(B) requires first,
 6 identification of the "consequential fact to which the proffered evidence of other acts
 7 is directed." *State v. Serna*, 2013-NMSC-033, ¶ 17, 305 P.3d 936 (internal quotation
 8 marks and citation omitted). Second, the rule requires a demonstration of the other
 9 acts' "relevancy to the consequential facts, and the material issue, such as intent, must
 10 in fact be in dispute." *Id.* (internal quotation marks and citation omitted). Third, if the
 11 evidence offered is of a crime other than the one charged, the other crime must "have
 12 a real probative value, and not just possible worth on issues of intent, motive, absence
 13 of mistake or accident, or to establish a scheme or plan." *Id.* (citation omitted).
 14 "[T]he rationale for admitting the evidence [must be] to prove something other than
 15 propensity." *Id.*; see also *State v. Martinez*, 1999-NMSC-018, ¶ 27, 127 N.M. 207,
 16 979 P.2d 718 ("The list of permissible uses of evidence of other wrongs in Rule 11-
 17 404(B) is intended to be illustrative rather than exhaustive, and evidence of other

1 wrongs may be admissible on alternative relevant bases so long as it is not admitted
2 to prove conformity with character.” (citation omitted)).

3 (54) Here, the evidence of the “no trespass” order, testimony about the broken
4 windshield, and the broken window was consequential to the determination of whether
5 Defendant had the intent to kill Robledo, an essential element of first-degree murder.
6 The State was not attempting to prove that Defendant acted in accordance with his
7 character, but rather that Defendant had motive and the intent to murder Robledo
8 because of their strained relationship. Such a purpose is permitted under Rule 11-402
9 NMRA. *See, e.g., State v. Rojo*, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829
10 (holding that evidence of the defendant’s and victim’s deteriorating relationship and
11 the specific actions surrounding her reason for rejecting the defendant “directly
12 addresse[d] the motivational theories presented at trial . . . [and t]hus, the trial court
13 did not abuse its discretion by admitting this evidence”); *see also State v. Allen*,
14 2000-NMSC-002, ¶ 41, 128 N.M. 482, 994 P.2d 728 (holding that “evidence of
15 Defendant’s prior crime in 1982 was relevant to prove his motive for the murder in
16 the context of the aggravating circumstance of murdering a witness.” (citations
17 omitted)). Accordingly, we hold that the district court did not abuse its discretion in
18 admitting the evidence of Defendant’s prior acts.

1 **2. Evidence of the head-butt on an officer**

2 (55) Defendant argues that the district court erred in allowing the prosecution's
3 inquiry during cross-examination about whether Defendant had head-butted a police
4 officer, arguing such evidence was "not connected by the prosecution in any manner
5 to killing of Mr. Robledo." The State argues that Defendant testifying that Robledo
6 was the first aggressor opened the door to being cross-examined on specific instances
7 of conduct where Defendant was aggressive and violent, including the head-butt on
8 an officer.

9 (56) At trial, Defendant testified that on the day he shot Robledo, he went to his
10 mother's house, saw Robledo, and they began arguing. Defendant claimed Robledo
11 struck him and hit him. Defendant also testified that Robledo "picked on" him, that
12 the Defendant had heard from his mother that Robledo had killed someone, and that
13 Robledo was not nice and not caring. Defendant stated that he did not plan to kill
14 Robledo, but that he was defending himself and knew that Robledo had a gun.
15 Defendant thought he was in danger when Robledo allegedly threatened to get his
16 pistol.

17 (57) On cross-examination, the prosecution asked the district court to allow evidence
18 of specific instances where the Defendant was aggressive, under Rule 11-

1 404(A)(2)(b)(ii) and Rule 11-405, because Defendant put forth evidence that Robledo,
2 the victim, was the first aggressor and had a violent character. Defense counsel
3 objected to the question, arguing that it did not satisfy any of the purposes of Rule 11-
4 404. The court overruled the objection. The district court granted the prosecution's
5 request to admit evidence of specific instances of conduct and allowed the prosecution
6 to ask the question. The prosecutor asked Defendant, "[i]sn't it true that you have also
7 head-butted a police officer?" Defense counsel, in order to preserve the issue for
8 appeal, renewed his objection.

9 (s*) The Rules of Evidence contain an exception in criminal cases to the general rule
10 prohibiting character evidence: if a defendant offers evidence of a victim's pertinent
11 trait, the State can offer rebuttal "evidence of the defendant's same character trait."
12 Rule 11-404(A)(2)(b)(ii). "When evidence of a person's character is admissible, it
13 may be offered in the form of reputation or opinion evidence. See Rule 11-405(A).
14 "On cross-examination of the character witness . . . inquiry into relevant specific
15 instances of the person's conduct" are allowed. Rule 11-405(A). Or "when a person's
16 character or character trait is an essential element of a charge, claim, or defense, the
17 character or trait may also be proved by relevant specific instances of conduct." Rule
18 11-405(B).

1 (59) While it is correct that the defendant who offers evidence of a victim's pertinent
2 character trait (e.g., violence) opens the door to allow the prosecution to offer
3 evidence of the defendant's same character trait, under Rules 11-404(A)(2)(b) and 11-
4 404(A)(2)(b)(ii) NMRA, the evidence that is admitted may only be reputation or
5 character evidence, unless the character trait is an essential element of the crime
6 charged. Here, Defendant offered evidence at trial that he shot Robledo in self-
7 defense because Robledo was the first aggressor. He supported this assertion by
8 offering evidence of Robledo's character: that Robledo was a violent and aggressive
9 man who had killed a person. This was evidence of the victim's "pertinent trait": a
10 reputation for violence and aggression. By offering the evidence of Defendant's head-
11 butt on an officer during cross-examination of Defendant, the State was offering
12 evidence that Defendant had the same traits for aggression and violence through an
13 inquiry into specific instances of Defendant's conduct. The evidence of head-butting
14 an officer is not reputation or opinion testimony. Nor is it proving an essential
15 element of the crime charged because violence is not a specific element of murder or
16 self-defense. *State v Baca*, 1993-NMCA-051, ¶ 16, 115 N.M. 536, 540, 854 P.2d
17 363, 367 ("The victim's violent disposition is not an 'element' of the defense in the
18 strictest sense; rather, it is used circumstantially -- that is, to help prove that the victim

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

v

ALBERT RAMIREZ,

Defendant

Prer bad
ACTS
Evidence
INCLOSING ARGUMENT
INADMISSIBLE


No CR-2007-434

DESIGNATION OF EXHIBITS

Pursuant to Rule 12-212 NMRA, the Defendant designates the following exhibits

1 State's Exhibits #1 - #110.

Respectfully submitted



Jesse R. Cosby, Esq.
JESSE R. COSBY, P.C.
Attorney for Defendant
P.O. Box 3330
Roswell, New Mexico 88202-3330
(575) 625-0516

LETTER RAG
Song stating
OF killing people
to help prove
1st degree murder
Rebuttal will full
it was admitted
was inadmissible.

And then said it

C. Shackles
ECC of

THIS PAGE

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ALL PAPERS ARE FACTS. EXHIBITS
RECORD, DOCUMENTS EVIDENCE,
CASES. RELEVANT TO MY CASE

C. SEE CASE LAW.

STATE V. BRAWLEY
Cite, Qs. 137A.3d. 757
(CONN. 2016).

IT SAYS. THE COURT RULED TO
ALLOW DEFENDANT MAY SEEK TO
ESTABLISH THAT THE JURY DID,
IN FACT, OBSERVE HIM IN SHOULES
IN CONNECTION WITH A PETITION
FOR WRIT OF HABEAS CORPUS.

Chesley

STATE v. BRAWLEY
 Ct. No. 137 A.3d 757 (Conn. 2016)

Conn. 763

trial with respect to whether the jury could or did see the restraints. In fact, defense counsel never renewed or amplified his initial objection after the trial court denied his motion to have the shackles removed. Furthermore, our review of the record reveals no evidence to suggest that the jury actually saw or otherwise knew of the defendant's shackles. In addition, according to the trial court's rectification of the record, the defendant always was seated at the defense table before the jury entered, and he remained there until after the jury left the courtroom. Finally, the fact that the trial court could not recall presiding over a single case in which a jury had been able to observe a

defendant in restraints strongly supports the conclusion that the jury in the present case did not see the defendant's shackles. On the present record therefore, the defendant has failed to establish that the trial court's impropriety in having him shackled during his trial abridged his presumption of innocence.⁴

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred



arguments. Id. at 634-35, 125 S.Ct. 2007. With respect to the first contention, the court determined that, contrary to Missouri's assertion, the record in the case "[made] clear that the jury was aware of the shackles." Id. at 634, 125 S.Ct. 2007. With regard to the second argument, the court concluded that the record "contain[ed] no formal or informal findings explaining the trial court's reasons for imposing the requirement of shackles beside the fact that Deck already [had] been convicted." (Internal quotation marks omitted.) Id. On the basis of its rejection of the two foregoing arguments, the court rejected Missouri's final argument, concluding that when a court, without adequate justification, orders (a) defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate prejudice to make out a due process violation. The [a]ppellate must prove beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained. (Emphasis added, internal quotation marks omitted.) Id. at 635, 125 S.Ct. 2007.

Thus, *Deck* makes clear that a heightened burden falls on the state when the unwarranted restraints are visible to the jury and not when, as in *Banegas*, the record is silent on the matter. Accordingly, we disagree with the conclusion that the court reached in *Banegas*. We further note that our understanding of the United States Supreme Court's holding in *Deck* is consistent with that of other federal and state courts that have examined the issue

See, e.g., *Mendoza v. Berghuis*, 544 F.3d 650, 654 (6th Cir. 2008) ("Deck's facts and holding concerned only visible restraints at trial. The [United States] Supreme Court was careful to repeat this limitation throughout its opinion." [Emphasis omitted.]) cert. denied, 556 U.S. 1184, 129 S.Ct. 1996, 173 L.Ed.2d 1096 (2009); see also *Ochoa v. Workman*, 669 F.3d 1130, 1145 (10th Cir.) ("it is the potential impact on the jury of visible restraints that implicates the fundamental fairness of a jury trial proceeding") cert. denied — U.S., 133 S.Ct. 321, 184 L.Ed.2d 190 (2012); *People v. Lerner*, 50 Cal.4th 99, 155, 235 P.3d 42, 112 Cal.Rptr.3d 746 (2010) (*Deck* did not support contention that prosecution was required to disprove visibility when there was no evidence in record that jury observed defendant wearing shackles) cert. denied, 563 U.S. 939, 131 S.Ct. 2143, 179 L.Ed.2d 497 (2011); and cert. denied sub nom. *Tobin v. California*, 563 U.S. 939, 131 S.Ct. 2097, 179 L.Ed.2d 497 (2011); *Hoang v. People*, 323 P.3d 780, 785-86 (Colo.) (when restraints are visible to jurors, prosecution bears burden to prove harmless error, but when it is not apparent from record that jury had observed shackles, defendant must demonstrate visibility) cert. denied — U.S., 135 S.Ct. 233, 190 L.Ed.2d 175 (2014).

⁴ Of course, the defendant may seek to establish that the jury did, in fact, observe him in shackles in connection with a petition for a writ of habeas corpus.

STATE v. BRAWLEY
 Ct. No. 137 A 3d 757 (Conn. 2016)

Conn. 757

case to that court for further proceedings consistent with this opinion.

In this opinion the other justices concurred.



321 Conn. 583
STATE of Connecticut
 v.
Michael BRAWLEY.
 No. 19441.

Supreme Court of Connecticut

Argued Dec. 15, 2015.

Decided June 14, 2016.

Background. Defendant, who remained shackled during trial, was found guilty in the Superior Court, Judicial District of Waterbury, Schuman, J., of burglary, conspiracy to commit burglary, kidnapping, conspiracy to commit kidnapping, assault, and carrying a pistol without a permit by the jury, and of criminal possession of a firearm by the court. Defendant appealed. The Appellate Court affirmed. Defendant petitioned for certification to appeal.

Holding. The Supreme Court, Palmer, J., held that defendant did not provide evidence required to support claim that his presumption of innocence was abridged by shackles.

Affirmed.

1. Criminal Law § 54-2a-637.7

Burglary defendant did not provide evidence demonstrating that jury actually was aware of his restraints at trial, as required to support claim that his presumption of innocence was abridged by trial court requiring him to remain shack-

led, even though record did not disclose reason that shackling was reasonably necessary. Defense did not make any offer of proof with respect to whether jury saw restraints; there was no evidence to suggest that jury actually saw shackles. Court's rectification of record indicated that defendant always was seated at defense table before jury entered and after jury left courtroom, and court could not recall single case in which jury had been able to observe defendant in restraints. Practice Book 1998, § 42-46.

2. Criminal Law § 54-2a-637.2

As a general proposition, a criminal defendant has the right to appear in court free from physical restraints.

3. Criminal Law § 54-2a-308

The presumption of innocence, although not articulated in the constitution, is a basic component of a fair trial under the system of criminal justice.

4. Criminal Law § 54-2a-637.2, 637.3

A defendant's right to appear before the jury unfettered is not absolute; a trial court may employ a reasonable means of restraint on a defendant if, exercising its broad discretion in such matters, the court finds that restraints are reasonably necessary under the circumstances. Practice Book 1998, § 42-46.

5. Criminal Law § 54-2a-637.4

The law permits a state to shackle a criminal defendant during the guilt phase only in the presence of a special need. Practice Book 1998, § 42-46.

6. Criminal Law § 54-2a-637.1

In order for a criminal defendant to enjoy the maximum benefit of the presumption of innocence, courts should make every reasonable effort to present the defendant before the jury in a manner that does not suggest, expressly or impliedly,

Shackles

1 (41) In reviewing the fundamental error exception to the preservation rule, we must
2 first determine whether an error occurred and if so, whether the error was
3 fundamental. *See id.* Fundamental error “must be such error as goes to the foundation
4 or basis of a defendant’s rights or must go to the foundation of the case or take from
5 the defendant a right which was essential to his defense and which no court could or
6 ought to permit him to waive.” *State v. Johnson*, 2010-NMSC-016, ¶ 25, 148 N.M.
7 50, 229 P.3d 523 (citation omitted). “Fundamental error only applies in exceptional
8 circumstances when guilt is so doubtful that it would shock the judicial conscience to
9 allow the conviction to stand.” *Id.*

10 (42) In *Holly*, we held that no fundamental error occurred where it was unclear
11 whether the juror had actually seen the defendant in handcuffs, and if they had,
12 whether it was more than “inadvertent or insignificant exposure.” 2009-NMSC-004,
13 ¶ 42. Similarly, in *Johnson*, because there was no indication that the jury was aware
14 the defendant was wearing leg irons during a trial, the presumption of innocence was
15 not violated, the dignity of the judicial process was not affected, and the district court
16 did not commit fundamental error. 2010-NMSC-016, ¶¶ 25, 29.

17 (43) Here, defense counsel concedes that a black skirt on the table shielded the jury’s
18 view of Defendant’s shackles and that he did not ask the court to make a finding of

*Prosecutorial
misconduct*

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ALL PAPERS ARE FACTS, AND EXHIBITS
RECORD, DOCUMENTS, CASES RELEVANT
TO MY CASE

D.
PROSECUTORIAL MISCONDUCT.

IN 3 INSTANCES.

- ①. IN CROSS EXAMINATION PROSECUTOR
QUESTIONED PETITIONER OF DOING
LEGAL RESEARCH TO BEAR HIS CHARGES
AND LEGAL RESEARCH TO GET THE
JURY TO BUY THIS.

ITS PROSECUTORIAL MISCONDUCT
ON COMMENT ON RIGHT TO
ASSIST IN HIS DEFENCE.

See exhibits.

- ②. COMMENT IN CLOSING ARGUMENTS
THAT MR. REMIREZ IS A
MENACE TO SOCIETY AND A
MURDERER. I NEED TRANSCRIPT
THERE IS NO EVIDENCE
TO PROVE THIS.

- ③. USING PRIOR BAD ACTS IN CLOSING
ARGUMENTS. THAT WERE INCOMMISSIBLE
AND PREJUDICIAL AND IRRELEVANT
TO THE MURDER CASE
See exhibits.

1 prejudice or declare a mistrial. Because it is unclear whether the jury saw the leg
2 restraints and if they did, there is no evidence that it was anything other than
3 inadvertent or insignificant exposure, this case is not the exceptional type that goes
4 to the violation of the foundation of presumption of innocence. Further, this case does
5 not shock the conscience as Defendant's guilt is supported by substantial evidence in
6 the record, including eyewitness testimony and evidence of Defendant's motive and
7 a pattern of conduct toward Robledo. See *State v. Trujillo*, 2002-NMSC-005, ¶ 60,
8 131 N.M. 709, 42 P.3d 814 (holding that because the Court found "substantial
9 evidence in the record to support Defendant's convictions, and because Defendant
10 failed to demonstrate circumstances that 'shock the conscience' or show a
11 fundamental unfairness," no fundamental error existed). Accordingly, there was no
12 fundamental error by the district court.

13 **E. The court did not abuse its discretion in admitting prior bad acts**

14 (44) Defendant's fifth issue is that the district court erred in admitting evidence of
15 prior acts, in violation of Rule 11-402 NMRA. Defendant argues that cumulatively,
16 the introduction of this evidence created the impression that Defendant was
17 troublesome and a lawbreaker. The State argues that the district court did not err in
18 allowing the State to present evidence of Defendant's animus toward the victim or in

Bad
ACTS

acted in the particular manner at the time of the incident in question.”) It seems that the information of Defendant head-butting an officer is being used only to show Defendant’s propensity for violence. And contrary to the State’s argument, under Rule 11-405(A) on cross-examination it is the specific instances of Robledo’s conduct that is allowed to rebut the testimony from Defendant of Robledo’s “pertinent trait.” See Rule 11-405.

(60) Accordingly, it was error for the district court to admit the evidence of Defendant’s prior act of head-butting a police officer. Non-constitutional error is harmless when there is no reasonable probability the error affected the verdict. *State v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d 110. In the context of all the evidence in the record as referenced in paragraphs 3 and 4, *supra*, this isolated error was harmless and had no effect on the conviction.

F. The district court did not abuse its discretion by not declaring a mistrial based on questions about Defendant’s legal research

(61) Defendant’s sixth issue is that the district court abused its discretion when it denied Defendant’s motion for a mistrial after the prosecutor cross-examined Defendant about the amount of legal research he conducted. Defendant argues that the prosecution’s conduct shows a calculated and pervasive strategy of penalizing the Defendant for the exercise of his constitutional rights by characterizing Defendant’s

Prosecutor's
misconduct 32

1 actions as manipulative abuses of “the system.” The State argues that because
2 Defendant initially indicated that he was seeking to argue a defense of self-defense,
3 the prosecutor did not cross the line by asking about the amount of legal research
4 Defendant had conducted.

5 (62) During the cross-examination of Defendant, the prosecutor asked, “And you’ve
6 done a significant amount of legal research on how to get the jury to buy this?” The
7 defense objected and moved for a mistrial. The court directed the prosecution to lay
8 a foundation. The prosecutor asked Defendant, “Do you recall giving a lot of requests
9 to go to the law library to research how to beat your charges?” Defense counsel
10 objected a second time, arguing that the question rose to prosecutorial misconduct,
11 and again asked for a mistrial. The judge ruled that he would not allow the questions
12 about Defendant’s research and would not declare a mistrial.

13 (63) We examine a district court’s denial of a motion for mistrial based on an
14 allegation of prosecutorial misconduct under an abuse of discretion standard. *See*
15 *Allen*, 2000-NMSC-002, ¶ 95 (“the trial court is in the best position to evaluate the
16 significance of any alleged prosecutorial errors” (citation omitted)); *see also State v*
17 *Ramos-Arenas*, 2012-NMCA-117, ¶ 1, 290 P.3d 733. ~~An~~ An isolated, minor impropriety
18 ordinarily is not sufficient to warrant reversal ~~if~~ because a fair trial is not necessarily

1 a perfect one.” *Allen*, 2000-NMSC-002, ¶ 95 (internal quotation marks and citations
2 omitted).

3 {64} / Reviewing all of the comments made, in the context in which they were made,
4 and taking into account those comments’ potential effect on the jury, the questions
5 were isolated and minor. Accordingly, the prosecutor’s remarks did not deprive
6 Defendant of a fair trial.

7 **IV. CONCLUSION**

8 {65} We hold that the district court did not commit reversible error as to all of
9 Defendant’s claims. Accordingly, we affirm Defendant’s convictions.

10 {66} **IT IS SO ORDERED.**

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PETRA JIMENEZ MAES, Justice

15 **WE CONCUR:**

16

17 **CHARLES W. DANIELS, Chief Justice**

18

19 **EDWARD L. CHÁVEZ, Justice**

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Washington as a "self-serving, illogical selfish non compassionate, no emotional interest in a family type of person," who acted irrational due to "drugs and alcoholism and a general not caring about other people." J.A. at 270-71. The crime, he implored to the jury, "[s]ure fits him." J.A. at 271. The prosecutor thus articulated perhaps the paradigm of the improper "bad character" argument—that the alleged criminal acts "fit" the evidence of Washington's character and lifestyle. Because this character attack pervaded the closing argument and rebuttal, we find that the prosecutor's misconduct was severe. See *Cook*, 602 F.2d at 120 (making the same conclusion after a pervasive character attack).

2

[7] We also agree with Petitioner that the prosecutor engaged in serious misconduct when he characterized Tamara's story as having been consistent over time when there was no evidence supporting that factual assertion.

[8 9] Misrepresenting facts in evidence can amount to substantial error because doing so "may profoundly impress a jury and may have a significant impact on the jury's deliberations." *Donnelly v. DeChristoforo*, 416 U.S. 637, 646, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). For similar reasons, asserting facts that were never admitted into evidence may mislead a jury in a prejudicial way. See *Berger v. United States*, 295 U.S. 78, 84, 55 S.Ct. 629, 29 L.Ed. 1314 (1935). This is particularly true when a prosecutor misrepres-

sents evidence because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligation as a representative of a sovereignty. See *id.* at 88, 55 S.Ct. 629.

Given this precedent characterizing Tamara's conversations with different individuals as consistent comprised clear prosecutorial misconduct. The State suggested that Tamara had been consistent when it stated the following:

This child talked to her mother, this child talked to the doctor. This child talked to the social service worker in detail. She testified. This child talked to Sergeant Elford in detail. This child went through preliminary examination and cross examination where there was cross examination and this child testified before you and nowhere for the most part based upon what happened, has it changed.

J.A. at 255 (emphasis added). Yet apart from the doctor's notes—to which the parties stipulated—the prosecutor elicited no evidence on the specifics of Tamara's conversations with any of these individuals establishing only that conversations had occurred. Surely then, there was no evidence as to whether or not her story had changed.

When Tamara herself testified, she stated only that she had conversations with the referenced people and that she had told them "what happened." The prosecutor did not ask her to describe the details of those conversations, nor did she volunteer them.⁴ Moreover, no other witnesses

4 Q Did you tell your mother something that happened to you then?

A Yes

Q Why did you tell her?

A Cause I didn't want to go back there

Q Did you talk to some nurses or maybe one nurse?

A I talked to a doctor and a nurse

Q Did you tell them what happened to you?

A Yes

Q Okay And then did a lady come out to see you at your school?

A Yes

Q Did she talk to you alone?

A Yes

Q And did you tell her what had happened to you?

A Yes

Q She asked you didn't she?

A Yes

Q Okay And then later on there was some policemen Sergeant Elford this gentleman right here?

He said
that was
me F.F.S
time I told
my story
to anyone
in cross exam
and closing
argument.

Grand Jury held
did not bring
this case

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1979

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1979

WASHINGTON v. HOFBAUER

Cite as 228 F.3d 689 (6th Cir. 2000)

testified about what Tamara told them because such testimony would have been in admissible hearsay. First, as Cora Beard was about to explain to the jury what Tamara had told her, Keston objected on hearsay grounds. She therefore testified only that, as a result of Tamara's statements, she did not move back in with Washington and she took Tamara to the hospital. During his examination of Sergeant Elford, the prosecutor only elicited that Elford interviewed Tamara Beard, and that he spoke to the prosecutor's office after that interview. Similarly, Woodson, the social service worker who examined Tamara, testified only that she had talked with Tamara four times, that Tamara had been alone with her for three of those conversations, and that as a result of their talks, she had contacted Sergeant Elford. She said nothing of the content of their conversations.

Given this testimony, we find that the State committed plain misconduct by stating that Tamara's story had not changed as she talked to these different individuals. Not only did the prosecutor improperly refer to statements not in evidence, but it is clear that the prosecutor's purpose was to enhance Tamara's credibility in the eyes of the jury. See, e.g., J.A. at 255 ("You think that a ten year old child is going to go through all of that, fool everybody, talking about two instances."). Such bolstering is also improper. Cf. *United States v. Francis*, 170 F.3d 546, 601 (6th Cir. 1999) (stating that improper "[b]olstering occurs when the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury"). *United States v. Duval*, No. 89-1891, 1990 WL 6271 at

*2 (6th Cir. April 26, 1990) (unpublished decision) (stating that improper witness vouching occurs when a prosecutor alludes to evidence outside the record as supporting the witness's testimony).

[10,11] Finally, we are unmoved by the State's feeble attempt to justify its plain misconduct. The State argues in its brief that in "this case Petitioner was charged with first degree criminal sexual conduct involving penetration. Obviously Tamara must have given a statement to someone prior to trial in which she claimed penetration." Hofbauer's Br. at 23. In a similar vein the State contended at oral argument that the prosecutor was simply pointing out to the jury that Tamara did not "recant" her story, a position the State argues was a reasonable inference given that the State brought the prosecution. This explanation is specious for two reasons. First, this justification simply sidesteps the impropriety at issue. The prosecution did far more than merely inform the jury that Tamara "must have" stated that penetration occurred at some point, or that she did not "recant" her story. Instead, it informed the jury that Tamara's story to each and every witness had never changed when there was in fact no evidence to that effect. This argument was a clear attempt to boost the credibility of Tamara and the believability of her story. Second, the very premise of the State's justification on appeal is flawed. Indeed, if the State had been attempting to argue the "reasonable inference" it described at oral argument and in its brief, that effort itself would have constituted gross misconduct. "[I]t is always improper for a prosecutor to suggest that a defendant is guilty merely by

A Yes
Q Did he talk to you and ask you what happened?
A Yes
Q Go over it with you?
A Yes
Q And then there came a time a while ago that you testified across the street over here in the District Court building before a judge didn't you?

A Yes
Q And he asked about telling the truth and you were under oath is that right?
A Yes
Q And you told the court what happened?
A Yes
J.A. at 162-63

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defendant needs and burden rests on the accused to demonstrate a constitutional violation. U.S.C.A. Const. Amend. 6.

12. Criminal Law §641.3

Trial is unfair if the accused is denied counsel at a critical stage of the trial. U.S.C.A. Const. Amend. 6.

13. Criminal Law §641.13(1)

If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of Sixth Amendment rights which makes adversary process itself presumptively unreliable. U.S.C.A. Const. Amend. 6.

14. Criminal Law §641.13(1)

Only when surrounding circumstances justify a presumption of ineffectiveness can Sixth Amendment claim be sufficient without inquiry into counsel's actual performance at trial. U.S.C.A. Const. Amend. 6.

15. Criminal Law §641.13(1), 1166.11

Fact that accused can attribute a deficiency in his representation to a source external to trial counsel does not make it any more or less likely that he received the type of trial envisioned by the Sixth Amendment, nor does it justify reversal of his conviction absent an actual effect on the trial process or the likelihood of such an effect. U.S.C.A. Const. Amend. 6.

16. Criminal Law §641.13(2)

Fact that defendant's newly appointed counsel was given only 25 days to prepare for trial of case which it had taken the Government four and one-half years to investigate, fact that counsel was a young attorney primarily engaged in real estate practice and was trying his first criminal case, gravity of the charge of mail fraud against the defendant, complexity of the case, and unavailability of witnesses to counsel did not, individually or in combination provide a basis for concluding that competent counsel was not able to provide

defendant with effective assistance of counsel, it was error to infer that right to counsel had been violated. U.S.C.A. Const. Amend. 6.

17. Criminal Law §641.13(4)

Character of a particular lawyer's experience may shed light in an evaluation of his actual performance but it does not justify a presumption of ineffectiveness in the absence of such an evaluation. U.S.C.A. Const. Amend. 6.

18. Criminal Law §641.13(2)

Neither fact that trial counsel used notes to assist him during opening statement to the jury nor fact that counsel told the jury that it was counsel's first trial was so inherently inconsistent with a reasonable effective defense as to justify a presumption that defendant's trial was unfair.

19. Criminal Law §1693

District court had jurisdiction to entertain motion for new trial based on ineffective assistance of counsel even though case was pending on direct appeal, court could have denied the motion on its merits or certified its intention to grant the motion to the Court of Appeals, which could have entertained a motion for remand. Fed. Rules Cr. Proc. Rule 33, 18 U.S.C.A.

20. Criminal Law §1192

Where Court of Appeals did not reach claim of actual ineffectiveness of counsel, because it reversed conviction based on presumption of ineffective assistance of counsel under the circumstances, claim of actual ineffectiveness remained open.

*Syllabus**

Respondent and two associates were indicted on mail fraud charges involving a "check kiting" scheme whereby checks were transferred between a bank in Florida and a bank in Oklahoma. When respondent's retained counsel withdrew shortly before the scheduled trial date, the District Court appointed a young lawyer with a real

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

U.S. v. CARTER

777

Cite as 234 F.3d 777 (6th Cir. 2001)

UNITED STATES of America,
Plaintiff-Appellee,

v.

Roquel Allen CARTER, Defendant-
Appellant.

No. 99-5430.

United States Court of Appeals,
Sixth Circuit

Argued Aug. 1, 2000

Decided and Filed Jan. 18, 2001

Defendant was convicted in the United States District Court for the Middle District of Tennessee, John T. Nixon, J., of armed bank robbery, and he appealed. The Court of Appeals, Moore, Circuit Judge, held that (1) prosecutor committed plain error in misstating the testimony of key identification witness and by repeatedly insisting that defense counsel was lying about witness's testimony, (2) prosecutor's misconduct affected defendant's substantial rights, and (3) misconduct seriously affected the integrity of judicial proceedings, warranting reversal of conviction and remand for new trial.

Reversed and remanded.

1. Criminal Law §1037.1(2)

Prosecutor committed plain error in misstating the testimony of identification witness by insisting that she did not testify that federal agent told her before she took the witness stand that she had made a mistake in identifying robber, when she had conceded on three separate occasions during trial that agent had told her she made a mistake, just before she gave her trial testimony, and by repeatedly insisting that defense counsel was lying about witness's testimony.

2. Criminal Law §1171.1(1)

In determining when prosecutorial misconduct warrants a new trial, a court must first consider whether the prosecutor's conduct and remarks were improper and, if so, the court must then consider and weigh the following four factors in

determining whether the impropriety was flagrant and thus warrants reversal: (1) whether the conduct and remarks of the prosecutor ~~tended to mislead the jury or prejudice the defendant~~, (2) ~~whether the conduct or remarks were isolated or extensive~~, (3) ~~whether the remarks were deliberately or accidentally made~~, and (4) ~~whether the evidence against the defendant was strong~~.

3. Criminal Law §1134(3)

When reviewing challenges to a prosecutor's remarks at trial, Court of Appeals examines the prosecutor's comments with in the context of the trial to determine whether such comments amounted to prejudicial error and in so doing Court considers whether and to what extent, the prosecutor's improper remarks were invited by defense counsel's argument.

4. Criminal Law §1037.1(1)

Prosecutorial misconduct may be so exceptionally flagrant that it constitutes plain error, and is grounds for reversal even if the defendant did not object to it.

5. Criminal Law §1030(1)

Before an appellate court can correct an error not raised at trial there must be (1) error, (2) that is plain, and (3) that affects substantial rights, and if all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

6. Criminal Law §720(2), 723(1)

While counsel has the freedom at trial to argue reasonable inferences from the evidence, counsel cannot misstate evidence or make personal attacks on opposing counsel.

7. Criminal Law §1171.7

Prosecutor's misconduct, constituting plain error, in misstating the testimony of identification witness by insisting that she did not testify that federal agent told her before she took the witness stand that she had made a mistake in identifying robber, when she had so testified three times, and by repeatedly insisting that defense coun-

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to mislead the jury or prejudice the defendant, 2) whether the statements were isolated or among a series of improper statements, 3) whether the statements were deliberately or accidentally before the jury, and 4) the total strength of the evidence against the accused. *United States v. Monus*, 128 F.3d 376, 394 (6th Cir.1997) (citing *United States v. Cobleigh*, 75 F.3d 242, 247 (6th Cir.1996)), *Carroll*, 26 F.3d at 1385 (citing *United States v. Leon*, 534 F.2d 667, 679 (6th Cir.1976)). To reverse a conviction because of an improper non-flagrant statement, a reviewing court must determine that: 1) the proof of the defendant's guilt is not overwhelming, 2) the defense counsel objected, and 3) the trial court failed to cure the impropriety by failing to admonish the jury. *Monus*, 128 F.3d at 394; *Carroll*, 26 F.3d at 1385-86 (citing *United States v. Bess*, 693 F.2d 749, 757 (6th Cir.1979)).

[6,7] The Defendants' first contention pertaining to misconduct is that the prosecutor improperly vouched for government witnesses. Improper vouching occurs when a prosecutor supports the credibility of a witness by indicating a personal belief in the witness's credibility thereby placing the prestige of the office of the United States Attorney behind that witness. See, e.g. *Taylor v. United States*, 985 F.2d 844, 846 (6th Cir.1993); *United States v. Martinez*, 981 F.2d 867, 871 (6th Cir.1992). Generally, improper vouching involves either blunt comments, see, e.g., *United States v. Kerr*, 981 F.2d 1050, 1053 (9th Cir.1992) (stating that improper vouching occurred when prosecutor asserted own belief in witness's credibility through comments including "I think he [the witness] was candid. I think he is honest."), or comments that imply that the prosecutor has special knowledge of facts not in front of the jury or of the credibility and truthfulness of witnesses and their testimony, see, e.g., *Carroll*, 26 F.3d at 1388 (stating that improper vouching occurred when prosecutor argued that the witness testifying under a plea agreement was in jeopardy if the court or government did not find the testimony truthful).

[8] Here the specific vouching allegations stem from the prosecutor's references to the

plea agreements of testifying witnesses. We have allowed a prosecutor to refer to the plea agreement of a testifying witness. See *United States v. Renteria*, 106 F.3d 765, 767 (7th Cir.1997). The prosecutor may elicit testimony about its terms, attack the credibility of the witness because of it and even refer to the plea agreement of a government witness in an attempt to deflect defense counsel's use of the agreement to attack the witness's credibility. See *United States v. Monroe*, 943 F.2d 1007 (9th Cir.1991) cert. denied, 503 U.S. 971, 112 S.Ct. 1585, 118 L.Ed.2d 304 (1992).

The potential for impropriety emerges, however, when a prosecutor explains that there is to be a recommendation to the witness's sentencing court whether the terms of the plea agreement have been adhered to. Because that recommendation is dependent upon whether the witness testifies truthfully, it is easy for a prosecutor to imply either intentionally or inadvertently, that the prosecutor is in a special position to ascertain whether the witness was, in fact, testifying truthfully. *Carroll*, 26 F.3d at 1387. Such implication leads quickly to improper vouching. See also *United States v. Dandy*, 998 F.2d 1344, 1353 (6th Cir.1993).

In the present case, the prosecutor improperly elicited information about and referred in her argument to the plea agreement made between the government and two of its witnesses, Lincoln Williams and Larry Walker. The first improper reference to the plea agreements came during the prosecutor's opening argument when she asserted that "if [Mr. Williams] testifies in this court truthfully, it's my intent to, as a government's representative, to recommend a 15 year sentence for him." She followed this by explaining that Mr. Walker had backed out of his original plea agreement, gone to trial and been convicted and sentenced but that she had "told him that [she] will go and inform the judge of his cooperation here, and it rests with the judge as to whether he wants to amend the sentence." Though she stated that each decision regarding the witnesses' sentences ultimately rested with the sentencing judge, the prosecutor used her opening argument to emphasize the role

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U.S. v. FRANCIS

Circas 176 F.3d 546 (6th Cir. 1999)

sell's use of agreement to attack witness' credibility 14 Witnesses @ 277(1)

§ Criminal Law @ 706(3)

Prosecutor improperly vouched for witness' credibility when, in examining witness regarding his plea agreement, prosecutor elicited testimony indicating that plea agreement materialized only after prosecutor believed that witness was being truthful, thereby improperly indicating belief in witness' credibility

10 Criminal Law @ 706(3, 8)

Prosecutor engaged in improper bolstering of agent's testimony when she asked agent on at least 14 occasions whether he had corroborated information obtained from informant, but did not elicit further details except in two instances, as to manner of corroboration after agent answered affirmatively, thereby leading reasonable juror to believe that prosecutor was implying guarantee of truthfulness based on facts outside the record

11 Criminal Law @ 720(5)

"Bolstering" occurs when the prosecutor implies that the witness' testimony is corroborated by evidence known to the government but not known to the jury

See publication Words and Phrases for other judicial constructions and definitions

12. Criminal Law @ 706(3)

A prosecutor may ask a government agent or other witness whether he was able to corroborate what he learned in the course of a criminal investigation, however, if the prosecutor pursues this line of questioning, she must also draw out testimony explaining how the information was corroborated and where it came from

13. Criminal Law @ 720(5)

Prosecutor engaged in improper attack on testifying defendant's credibility when in closing arguments, she called defendant a liar and con man without establishing evidentiary bases for such attacks.

If a defendant testifies, a prosecutor may attack his credibility to the same extent as any other witness

15. Criminal Law @ 720(5)

To avoid impropriety comments of prosecutor who asserts in closing arguments that testifying defendant was lying must reflect reasonable inferences from the evidence adduced at trial

16. Criminal Law @ 720(5)

Prosecutorial misconduct occurs when a jury could reasonably believe that the prosecutor was expressing a personal opinion as to the testifying defendant's credibility

17. Criminal Law @ 1171.1(2.1)

Upon showing that prosecutorial comments were improper, a defendant typically must show that the impropriety was so flagrant that it required reversal, in that only a retrial could correct the error.

18. Criminal Law @ 706(2)

Prosecutor's conduct in eliciting agent's testimony regarding guilty pleas of individuals who did not testify at trial was flagrantly improper

19 Criminal Law @ 1186.1

Although individual instances of improper comments and questions by prosecutor were insufficient standing alone, to warrant reversal under standards applicable to flagrant and nonflagrant unproprieties, new trial was warranted when numerous examples of unpropriety were viewed together and in the context of entire trial

20. Criminal Law @ 1171.1(2.1)

The determination of whether a prosecutor's behavior constituted prejudicial error must be made in the context of the whole trial

21. Criminal Law @ 700(1)

Prosecutors must be zealous advocates and enforcers of the law while, at the same time, acting in a manner that ensures a fair and just trial

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UNITED STATES of America,
Plaintiff-Appellee,

v

Lewis FRANCIS (97-1129) and Louay Francis (97-1130), Defendants-Appellants.

Nos. 97-1129, 97-1130

**United States Court of Appeals,
 Sixth Circuit**

Argued and Submitted April 20, 1998

Decided Feb. 25, 1999

Defendants were convicted by jury in the United States District Court for the Eastern District of Michigan, Barbara K. Hackett, J., of, inter alia, conspiracy to launder monetary instruments and criminal forfeiture. Defendants appealed. The Court of Appeals, Boyce F. Martin, Jr., Chief Judge, held that: (1) prosecutor improperly elicited information about and referred in argument to plea agreements between government and two witnesses; (2) prosecutor improperly vouched for witness' credibility; (3) prosecutor engaged in improper bolstering of agent's testimony; (4) prosecutor engaged in improper attack on testifying defendant's credibility; and (5) new trial was warranted when numerous examples of impropriety were viewed together and in the context of entire trial.

Reversed and remanded.

1. Criminal Law §1156(1)

Court of Appeals reviews the denial of a motion for a new trial for an abuse of discretion.

2. Criminal Law §1139

Whether statements by prosecutor amount to prosecutorial misconduct and whether they rendered the trial fundamentally unfair are mixed questions of law and fact and are reviewed de novo.

3. Criminal Law §1171.1(2.1)

When reviewing claims of prosecutorial misconduct, Court of Appeals determines first whether challenged statements were im-

proper, if they appear improper, court then looks to see if they were flagrant and warrant reversal.

4. Criminal Law §713

Standard by which courts determine flagrantcy of prosecutor statements is (1) whether statements tended to mislead jury or prejudice defendant; (2) whether statements were isolated or among a series of improper statements; (3) whether statements were deliberately or accidentally before jury; and (4) total strength of the evidence against defendant.

5. Criminal Law §1171.1(2.1)

To reverse a conviction based on improper, nonflagrant statement by prosecution, a reviewing court must determine that: (1) the proof of defendant's guilt is not overwhelming; (2) defense counsel objected; and (3) trial court failed to cure the impropriety by failing to admonish jury.

6. Criminal Law §706(2), 728(5)

Prosecutor improperly elicited information about and referred in argument to plea agreements between government and two witnesses when she emphasized role that she would have in recommending whether witnesses' sentences should be lowered as result of their testimony in defendants' trial and suggested that her recommendation would depend upon whether she personally believed that witnesses were being truthful.

7. Criminal Law §720(5)

"Improper vouching" occurs when a prosecutor supports the credibility of a witness by indicating a personal belief in the witness' credibility, thereby placing the prestige of the office of the United States Attorney behind that witness.

See publication Words and Phrases for other judicial constructions and definitions.

8. Criminal Law §706(3), 720(5)

Prosecutor may elicit testimony about terms of witness' plea agreement, attack credibility of witness because of agreement, and even refer to agreement of a government witness in attempt to deflect defense coun-

7. Criminal Law — 1144.13(3)

In determining whether there was sufficient evidence to permit case to be submitted to jury and to support verdict of guilty rendered Court of Appeals views evidence in light most favorable to Government.

8. Conspiracy — 47(7)**Gaming — 98(1)**

Absent other error, evidence was sufficient to sustain convictions of conducting gambling business in violation of state law involving five or more persons and having gross revenue of more than \$2,000 on single day, and was sufficient to sustain convictions of conspiracy to commit that offense. 18 U.S.C.A. §§ 371, 1955

9. Conspiracy — 47(7)**Gaming — 98(1)**

Evidence indicating that defendant exchanged betting line information with another person involved in gambling operation involving five or more persons and that defendant and other person made bets with each other was insufficient to sustain conviction of conducting gambling business in violation of state law involving five or more persons and having gross revenue of more than \$2,000 on a single day, and was insufficient to sustain conviction of conspiracy to commit that offense. 18 U.S.C.A. §§ 371, 1955

10. Criminal Law — 691

Defendant should be afforded every reasonable opportunity to challenge testimony that tends to incriminate him and to demonstrate his innocence.

11. Criminal Law — 719(1)

Prosecutor's remarks in closing argument that defendant was trying to "con" the jury were improper and highly prejudicial, in that they suggested that prosecutor had information not disclosed to jury demonstrating defendant's guilt.

12. Criminal Law — 719(1, 3)

Prosecuting attorney may not express to jury his personal knowledge of guilt of accused or bring to its attention purported facts that are not in evidence and are prejudicial.

13. Criminal Law — 730(1)

Not every instance of prosecutorial misconduct requires reversal of conviction and when isolated remarks are made in course of long trial and jury is given appropriate cautionary instruction designed to overcome or to dissipate any prejudice that may have been caused, error may be harmless.

14. Criminal Law — 1171.1(2)

In determining whether prosecutorial misconduct is prejudicial, Court of Appeals considers degree to which remarks complained of had tendency to mislead jury and to prejudice accused, whether they were isolated or extensive, whether they were deliberately or accidentally placed before jury, and strength of competent proof introduced to establish guilt of accused.

15. Criminal Law — 723(2), 1171.1(6)

In prosecution for conspiracy and for conducting gambling business, prosecutor's remarks characterizing defendants' gambling activities as part of nationwide scheme that was causing substantial hardship to innocent persons, that was effecting decay of our cities, and that was financing other criminal activity, were reverently erroneous, in view of fact that evidence was not overwhelming and was so esoteric that much of it required expert interpretation and explanation, prosecutor continued his prejudicial remarks even after court advised him to stop, and court did not admonish jury to disregard or give appropriate cautionary instruction.

Neil Fink, Michael S. Friedman, Detroit, Mich., for defendants-appellants.

Ralph B. Guy, Jr., U. S. Atty., Detroit, Mich., Laurence Leff, Atty. in Charge, U. S. Dept. of Justice, Washington, D.C., Joseph S. Davies, Jr., App. Section Crim. Div., Dept. of Justice, Washington, D.C., for plaintiff-appellee.

Before EDWARDS, PECK and MCCREE,
Circuit Judges.

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nor daughter of defendant's live-in girlfriend was ineffective in failing to object to acts of misconduct by prosecutor in improperly emphasizing evidence of defendant's "bad character" during closing argument while decision not to object during cross-examination regarding character evidence defense had introduced may have had sound tactical basis, no explanation existed for failure to object to prosecutor's most egregious character attacks during closing argument, and basic misunderstanding by counsel in believing that State could use character evidence defense had offered for any manner it desired was objectively unreasonable U.S.C.A. Const. Amend 6

24. Criminal Law §338(7)

Rules addressing admission of character evidence implicitly recognize the fine yet vital distinction between the risk of prejudice borne by evidence introduced for permissible reasons, and the clear prejudice that results from an uncured and flagrantly improper use of that same evidence, and thus even if some potential prejudice arises from the introduction of certain evidence, court generally presumes that if properly instructed by judges and guided by counsel, juries are capable of considering evidence for one purpose but not another

25. Habeas Corpus §486(2)

Determination by state court that counsel was not ineffective in failing to object to prosecutor's characterization of story told by child victim of alleged criminal sexual conduct as having been consistent over time, where there was no evidence to support such a factual assertion involved an unreasonable application of clearly established law, and thus could provide basis for habeas corpus relief under Antiterrorism and Effective Death Penalty Act (AEDPA); failure to object fell below an objective standard of reasonableness and was based on simple incompetence rather than sound trial strategy U.S.C.A. Const Amend 6, 28 U.S.C.A. § 2254(d)(1)

26. Criminal Law §641.13(2.1)

Counsel for defendant, who was charged with acts of criminal sexual conduct against minor daughter of defendant's live-in girlfriend, was ineffective in failing to object to prosecutor's characterization of story told by daughter as having been consistent over time, where there was no evidence to support such a factual assertion. U.S.C.A. Const. Amend 6

27. Criminal Law §1144.15

Appellate court generally must presume that juries follow their instructions, and is excused from applying such a presumption only when there is a strong likelihood that the effect of the evidence would be devastating to the defendant, and that there is an overwhelming probability that the jury will be unable to follow the court's instructions. U.S.C.A. Const. Amend 6

28. Criminal Law §641.13(2.1)

A court reviewing a claim that defense counsel was ineffective in failing to object must look at factors independent of the general effectiveness of objecting, such as other possible trial strategies, the degree of the purported misconduct, or the admissibility of the evidence in question. U.S.C.A. Const. Amend 6

29. Criminal Law §641.13(2.1)

Defense counsel's deficient performance in failing to object during closing argument in prosecution for criminal sexual conduct to prosecutor's improper emphasis on evidence of defendant's bad character, or to prosecutor's characterization of story told by victim as having been consistent over time where there was no evidence to support such an assertion, was prejudicial, and could provide basis for postconviction relief trial was a credibility contest, and twin acts of misconduct, in which prosecutor improperly boosted daughter's credibility by diminishing that of defendant, very likely tipped scales in daughter's favor U.S.C.A. Const. Amend 6

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U.S. v FRANCIS

Cite as 170 F.3d 544 (6th Cir. 1999)

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she would have in recommending whether the witnesses' sentences should be lowered because of their testimony in the Francis trial. The wording of her argument made it clear that her recommendation would depend on whether she personally believed Mr. Williams and Mr. Walker told the truth. Because this could lead a reasonable juror to infer that the prosecutor had a special ability or extraneous knowledge to assess credibility, the statements were improper.

[9] The more troublesome reference to Mr. Williams's plea agreement came during his testimony as the prosecutor examined him. Through a series of questions, the prosecutor elicited information about the initiation of his plea agreement. The jury heard how the prosecutor and Mr. Williams met once and the meeting ended "abruptly" because the prosecutor "said [Mr. Williams] wasn't telling the truth, wasn't protecting people at that time." The jury then heard that the prosecutor and Mr. Williams met again, at which time the prosecutor finally believed him and offered him a plea agreement. Mr. Williams's testimony made it clear to the jury that the plea agreement materialized only after the prosecutor believed him. Because this indicated a belief in the witness's credibility, it was improper as well. It follows that this set of remarks constitutes improper vouching.

[10-12] Also here are the arguments that the prosecutor engaged in improper bolstering. Bolstering and vouching are much alike and go to the heart of a fair trial. Bolstering occurs when the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury. *United States v. Sanchez*, 118 F.3d 192, 198 (4th Cir.1997). A prosecutor may ask a government agent or other witnesses whether he was able to corroborate what he learned in the course of a criminal investigation. However, if the prosecutor pursues this line of questioning, she must also draw out testimony explaining how the information was corroborated and where it originated. *See United States v. Lewis*, 10 F.3d 1086, 1089 (4th Cir.1994).

Here, the prosecutor asked Agent Blackwood repeatedly whether he had corroborated

information obtained from Mr. Walker. There were at least fourteen such inquiries. Although Agent Blackwood answered each in the affirmative, he provided further detail in only two instances. He did this by properly adding that he had corroborated what Mr. Walker had told him by checking police reports, bank records, tax records, and in interviews and conversations with other individuals. He also testified that he had corroborated the drug dealing by arranging for an undercover officer to purchase drugs. On all other occasions, however, Agent Blackwood responded to questions about corroboration by merely asserting that he had, in fact, corroborated the information. The prosecutor's failure to introduce to the jury whether the information was corroborated via documents, searches, conversations, or other means would lead a reasonable juror to believe that the prosecutor was implying a guarantee of truthfulness based on facts outside the record. This particular group of comments therefore amounts to improper bolstering.

[13-16] Lewis Francis also raises the prosecutor improperly questioning his credibility. If a defendant testifies as here, a prosecutor may attack his credibility to the same extent as any other witness. *See Ref. v. United States*, 271 U.S. 494, 497-46 S.Ct. 366, 70 L.Ed. 1054 (1926); *see also Fitzpatrick v. United States*, 178 U.S. 304, 315, 20 S.Ct. 944, 44 L.Ed. 1078 (1900). This Court has held that a prosecutor may assert that a defendant is lying during her closing argument when emphasizing discrepancies between the evidence and that defendant's testimony. *See United States v. Vent*, 23 F.3d 985, 989 (6th Cir.1994). To avoid impropriety, however, such comments must "reflect reasonable inferences from the evidence adduced at trial." *See id.* (quoting *United States v. Goodapple*, 958 F.2d 1402, 1409-10 (7th Cir.1992)). Again, misconduct occurs when a jury could reasonably believe that the prosecutor was instead, expressing a personal opinion as to the witness's credibility. *Taylor*, 985 F.2d at 846 (citing *United States v. Causey*, 834 F.2d 1277, 1282 (6th Cir.1987), cert. denied, 486 U.S. 1034, 103 S.Ct. 2019, 100 L.Ed.2d 606 (1988)).

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Circuit 228 F.3d 445 (6th Cir. 2000)

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was plainly improper. Second, we will consider whether Keston was constitutionally ineffective for failing to object to the prosecutorial misconduct. Third, we will consider whether that ineffectiveness satisfies the "cause and prejudice" exception to procedural default allowing us to ask whether the misconduct itself provides grounds for habeas relief. We find for Washington on all three questions.

A

Before assessing whether Keston was ineffective for failing to object to the prosecutor's actions, we must first determine whether the prosecutor committed misconduct. See generally *Cobb v Perini*, 832 F.2d 342, 347-48 (6th Cir. 1987) (rejecting claim that counsel's failure to object comprised ineffectiveness in part because it was unclear whether challenged evidence was improper). *Barton v Morris*, No. 95-3848, 1996 WL 408504, at *2 (6th Cir. July 19, 1996) (unpublished decision) (concluding that counsel's failure to object to prosecutor's closing argument was not ineffective because "those comments did not amount to prosecutorial misconduct and would not have provided the basis for action by the trial judge"). Juxtaposing precedent from this circuit alongside the trial record convinces us that several aspects of the prosecutor's behavior clearly crossed the line into plain and prejudicial impropriety.

[3,4] First, we address the prosecution's emphasis on Washington's "bad character." A fundamental rule of evidence is that a defendant's "bad character cannot be used to argue that the defendant committed the crime for which he is being tried, or had the propensity to commit that crime. See, e.g., Fed. R. Evid. 404(a) ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion."). Mich. R. Evid. 404(a) (same), *Michelson v. United*

States 335 U.S. 469, 476, 69 S.Ct. 213, 93 L.Ed. 168 (1948) (stating that improper character evidence "weigh[s] too much with the jury and overpersuade[s] them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge"); *United States v Vance* 871 F.2d 572, 575 (6th Cir. 1989) (providing that "bad acts evidence is not admissible to prove character or criminal propensity" under Fed. R. Evid. 404(b)); *United States v Ring*, 513 F.2d 1001, 1004 (6th Cir. 1975) (stating that in jury trials, evidence of a criminal defendant's bad acts or prior misconduct is inadmissible to show criminal propensity because it "tends to confuse the issue of guilt or innocence of the specific offenses charged and to weigh too heavily with the jury"). When a prosecutor dwells on a defendant's bad character in this prohibited manner, we may find prosecutorial misconduct. See e.g., *Cook v Bordenkircher*, 602 F.2d 117, 120 (6th Cir. 1979) (noting that the "prosecutor's misconduct in this case is severe" due to his "persistent Ad hominem attack on the petitioner's character").

[5,6] In this case we find that while the evidence as to Washington's character was admissible for certain limited purposes, the prosecutor went far beyond the bounds of permitted conduct when presenting that evidence to the jury. Because Keston introduced much of this evidence as part of his defense strategy, see *infra*, and because aspects of Washington's character shed light on why Tamara had not informed others of the alleged acts, we do not find that the State's cross-examination of Washington constituted prejudicial misconduct on its own. However, the prosecutor's animated recitation of this character evidence during closing arguments was plainly improper. In his initial summation, the prosecutor improperly implied that the jurors should consider Washington's unseemly character when rendering their verdict, in his rebuttal, he explicitly urged them to do so. Meanwhile, he attacked

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Circuit 223 F.3d 1183 (9th Cir. 2000)

to stand trial." *Drops*, 420 U.S. at 180, 95 S.Ct. 896

[11] The first of the trial court's findings was unreasonable. It is true that a finding by a trial court regarding credibility is ordinarily the kind of finding to which we would defer on collateral review. See *Thompson v. Keohane*, 516 U.S. 99, 111 S.Ct. 457, 133 L.Ed.2d 383 (1995). But here the factfinding procedure by the judge was clearly inadequate. Defense counsel twice related to the court that Torres now believed that defense counsel and the court were part of the conspiracy against Torres; counsel then suggested that a competency hearing would be appropriate. The court refused to order a hearing. It concluded, without questioning Torres, that (1) Torres was simply continuing his effort to remove his counsel, (2) that Torres wanted to get rid of counsel because she was not doing what he wanted her to do, and (3) that Torres was "no different than any other defendant who is dissatisfied with his attorney."

In light of the previous medical evaluation by Dr. Wells, it was unreasonable for the court not to make a more complete inquiry into the nature of defense counsel's statement that Torres now believed the conspiracy against him included his counsel and the trial judge. Although Wells had opined that Torres was competent to stand trial, he also concluded, on the strength of testing designed to detect dissembling, that Torres was "fully credible in his statements [that he was a victim of a medical conspiracy] and not seeking consciously to deceive in any way." Thus, the Wells evaluation should have alerted the trial court to the strong possibility that Torres was not dissembling when he told his attorney that he now believed she and the trial judge were part of the conspiracy against him. At the very least, the trial court could not have concluded reasonably that Torres was disingenuous without inquiring of Torres himself, or of Dr. Wells. On these facts, merely observing Torres's

demeanor in court would be insufficient factfinding to make a determination about Torres's credibility.

[12] The trial court's second finding, that there was no bona fide doubt regarding Torres's competence, was conclusory and not fairly supported by evidence on the record.⁵ After dismissing the notion that Torres's conspiracy delusion had now spread to his attorney and the court, the judge stated "[u]nless there is something specific, the court will not declare a doubt." But there was more than sufficient evidence before the trial judge at that time. First, defense counsel had proffered evidence that the defendant would no longer be able to assist rationally in his defense because he believed his attorney was part of a greater conspiracy against him. See *United States v. Nagy*, No. 96-CR601, 1998 WL 341940, at *4 (S.D.N.Y. June 26, 1998) (defendant's paranoid delusions of conspiracy against him rendered him unable to assist in his defense despite factual understanding of role of lawyers and judge in courtroom), *aff'd*, 173 F.3d 847, 1999 WL 245869 (2d Cir.), *cert. denied*, — U.S. —, 120 S.Ct. 105, 145 L.Ed.2d 89 (1999). *United States v. Blohm*, 579 F.Supp. 495, 504-06 (S.D.N.Y. 1983) (unpublished opinion). Torres's defense counsel was in the best position to evaluate Torres's competence and ability to render assistance. See *Medina v. California*, 505 U.S. 437, 450, 112 S.Ct. 2572, 120 L.Ed.2d 853 (1992). Her recommendation to the judge, while not necessarily sufficient to create a bona fide doubt, should have been considered seriously by the court. See *id.*

[13] Finally, defendant's unusual and self-defeating behavior in the courtroom suggested that an inquiry into competence was required. The district court catalogued Torres's peculiar behavior: he insisted on wearing jailhouse blues, threatened to assault his attorney, insisted, after being ordered shackled, to be handcuffed

⁵ In contrast the trial court in *Maggio* had made specific findings of fact that justified its

refusal to hold a competency hearing. See *Maggio*, 462 U.S. at 113-15, 103 S.Ct. 2261.

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WASHINGTON v. HOFBAUER

Circuit 228 F.3d 689 (6th Cir. 2008)

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14. Criminal Law §641.13(1)

To prevail on ineffective assistance of counsel claim, defendant must show that counsel's performance was deficient, in that it involved errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment, and that those deficiencies were prejudicial to the defense. U.S.C.A. Const. Amend. 6.

15. Criminal Law §641.13(1)

To establish deficient performance by counsel, defendant must show that counsel's conduct fell below an objective standard of reasonableness, and that counsel's identified acts and omissions were outside the wide range of professionally competent assistance. U.S.C.A. Const. Amend. 6.

16. Criminal Law §641.13(1)

In determining whether counsel's performance was deficient, court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and defendant bears the burden of overcoming the presumption that the challenged action might be considered sound trial strategy. U.S.C.A. Const. Amend. 6.

17. Criminal Law §641.13(1)

In evaluating an ineffective assistance of counsel claim, courts must not view a trial in hindsight, but must evaluate the reasonableness of counsel's performance within the context of the circumstances at the time of the alleged errors. U.S.C.A. Const. Amend. 6.

18. Criminal Law §641.13(2.1)

Counsel's failure to object to prosecutorial misconduct constitutes deficient performance when that failure is due to clear inexperience or lack of knowledge of controlling law, rather than reasonable trial strategy. U.S.C.A. Const. Amend. 6.

19. Criminal Law §641.13(1)

To show that he suffered prejudice as result of counsel's deficient performance, defendant must demonstrate that there is

a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that but for counsel's unprofessional errors the result of the proceeding would have been different. U.S.C.A. Const. Amend. 6.

20. Criminal Law §641.13(1)

Essential question in determining if defendant suffered prejudice as result of counsel's deficient performance is whether better lawyering would have produced a different result. U.S.C.A. Const. Amend. 6.

21. Habeas Corpus §486(2)

Determination by state court that counsel was not ineffective in failing to object to misconduct by prosecutor in placing improper emphasis on evidence of defendant's bad character during closing argument involved an unreasonable application of clearly established law, and thus could provide basis for habeas corpus relief under Antiterrorism and Effective Death Penalty Act: counsel's failure to object fell below an objective standard of reasonableness and was outside the wide range of professionally competent assistance, and resulted in prejudice. U.S.C.A. Const. Amend. 6, 28 U.S.C.A. § 2254(d)(1).

22. Criminal Law §641.13(6)

Decision by counsel for defendant charged with acts of criminal sexual conduct against minor daughter of defendant's live-in girlfriend not to object during State's cross-examination of defendant regarding evidence of defendant's bad character, which was part of strategy of providing jury a basis for disbelieving testimony of victim, represented a reasonable tactical decision and did not constitute ineffective assistance of counsel. Strategy was one of few possible ways to "spin" evidence of defendant's unappealing character into a potentially exculpatory use. U.S.C.A. Const. Amend. 6.

23. Criminal Law §641.13(2.1)

Counsel for defendant charged with acts of criminal sexual conduct against mi-

correctly identified the governing legal principle from the Supreme Court's decisions, but unreasonably applied that principle to the facts of the case it may grant petition for writ of habeas corpus. 28 U.S.C.A. § 2254(d)(1)

3. Criminal Law §376

A defendant's bad character cannot be used to argue that the defendant committed the crime for which he is being tried, or had the propensity to commit that crime. Fed Rules Evid Rule 404(a), 28 U.S.C.A.

4. Criminal Law §722.3

When a prosecutor dwells on a defendant's bad character in an attempt to argue that defendant committed charged crime, or had propensity to commit that crime, court may find prosecutorial misconduct.

5. Criminal Law §706(4)

Prosecutor did not engage in misconduct by cross-examining defendant regarding character evidence in prosecution for acts of criminal sexual conduct against daughter of defendant's live-in girlfriend where defendant had introduced much of evidence in question as part of defense strategy, and aspects of defendant's character shed light on why child victim had not informed others of alleged acts

6. Criminal Law §722.3

Prosecutor engaged in misconduct by making animated recitation during closing argument of evidence relating to defendant's character, in which he emphasized that defendant did not work, beat his live-in girlfriend regularly, consumed alcohol excessively, and did not make payments on girlfriend's home, in prosecution for acts of criminal sexual conduct against girlfriend's minor daughter; prosecutor explicitly urged jurors to consider defendant's unseemly character when rendering their verdict, and implied that criminal acts charged "fit" evidence of defendant's character and lifestyle.

7. Criminal Law §720(5)

Prosecutor engaged in misconduct when he sought to bolster testimony of child victim of alleged criminal sexual conduct by characterizing her story as having been consistent over time, where there was no evidence to support such a factual assertion.

8. Criminal Law §719(1)

Actions of prosecutor in misrepresenting facts in evidence can amount to substantial error, because doing so may profoundly impress a jury and may have a significant impact on the jury's deliberations

9. Criminal Law §1171.3

Asserting facts that were never admitted into evidence may mislead a jury in a prejudicial way, particularly when a prosecutor misrepresents evidence, because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligation as a representative of a sovereign

10. Criminal Law §720.5

It is always improper for a prosecutor to suggest that a defendant is guilty merely because he is being prosecuted or has been indicted

11. Criminal Law §720(1)

It is always improper for a prosecutor to imply to a jury that an underlying factual predicate of a crime must be true due to the fact of indictment or prosecution

12. Criminal Law §641.13(1)

An essential ingredient of the Sixth Amendment right to counsel is that counsel provide constitutionally effective assistance. U.S.C.A. Const Amend 6

13. Criminal Law §641.13(1)

Benchmark in determining effectiveness of counsel is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. U.S.C.A. Const Amend 6

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STOUT v J.D. BYRIDER
Case No. 221 F.3d 709 (4th Cir. 2000)

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685, 709 (6th Cir. 1994), *United States v Morrow*, 923 F.2d 427, 432 (1991)

important roles is to ensure that the prosecutor does not transgress those bounds.

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[37] As explained in Part III A the challenged aspects of the State's closing argument were clearly improper. We also find the improprieties to have been sufficiently flagrant to satisfy the four prongs of *Boyle* and warrant reversal. First, as stated above, there was a strong likelihood that the improper statements would have misled the jury and prejudiced the defendant, particularly considering the long delay since the actual testimony of the witnesses. Second, the comments were extensive, comprising part of the prosecutor's continuous effort to have the jury determine credibility based on improper considerations—either statements not in evidence or improper character assessments. Third, it is clear that the remarks were deliberately made, with the prosecutor repeating his "fit" theory throughout closing argument. And fourth there was no evidence against Washington outside of Tamara Beard's account, which the prosecutor's misconduct impermissibly bolstered. In short the prosecutor's misconduct was sufficiently flagrant to violate Washington's due process rights.

In this case, both attorneys failed to perform their respective duties. We find that their failure deprived Washington of his constitutional rights, and that the state courts' conclusions to the contrary were objectively unreasonable. We therefore REVERSE the district court and grant a conditional writ of habeas corpus, giving the State of Michigan ninety days in which to provide Washington a new trial or release him.



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James D. STOUT; Shirley A. Brown,
Plaintiffs-Appellants,

v.

J.D. BYRIDER, a/k/a Docherty Motors,
Inc.; T & J Acceptance Corporation,
d/b/a Carnow Acceptance Company,
Defendants-Appellees.

No. 99-3854.

United States Court of Appeals
Sixth Circuit.

Argued: June 23, 2000

Decided and Filed: Sept. 8, 2000

IV.

[38-40] As the people's representative in our system of justice, a prosecutor must adhere to the rules and principles that ensure that a jury determines a defendant's guilt based on the evidence before it. In a close credibility contest such as this, with horrible acts alleged but scant hard evidence for the jury to weigh, a prosecutor must be doubly careful to stay within the bounds of proper conduct. See *Martin v. Parker*, 11 F.3d 613, 616-17 (6th Cir. 1993) (stating that because cases involving sexual abuse "turn on the relative credibilities of the defendant and the prosecuting witness... a strict adherence to the rules of evidence and appropriate prosecutorial conduct is required to insure a fair trial"). One of defense counsel's most

Buyers of used vehicle dealership brought prospective class action against dealership, and finance company, asserting claims for fraud, and under Ohio Consumer Sales Practices Act (OCSA) and federal Truth in Lending Act (TILA). The United States District Court for the Northern District of Ohio James S. Gwin, J., denied class certification, and granted defendants motion to compel arbitration, 50 F.Supp.2d 733. Plaintiffs appealed. The Court of Appeals, Clay, Circuit Judge, held that (1) arbitration agreements entered by buyers

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derstanding of universal trial and evidence principles falls well below an objective standard of reasonableness. See *Grauley*, 87 F.3d at 786 (stating that when counsel failed to object because of a lack of awareness of the law, *Strickland* was violated), *Rachel*, 590 F.2d at 204 (concluding that the Sixth Amendment was violated because attorneys' inexperience, inattention or lack of knowledge of the law led to their failure to object to misconduct). For similar reasons, we find that the state trial court's analysis of this issue was objectively unreasonable. Once again, that court concluded that the prosecutor had only sought to provide a "factual backdrop" to the crime as well as an explanation for Tamara's silence after the alleged acts, J.A. at 48-49, when it is crystal clear from the record that the State went well beyond that limited use, proffering an argument that was a prototypical example of how character evidence should not be used. Not having recognized the clear predicate problem itself, the trial court's conclusion that Keston did not violate *Strickland* by failing to object to that problem is thus inherently flawed. To characterize this conclusion as an "objectively reasonable" application of *Strickland* would be to dilute our review under the AEDPA to a generous apology for the clearest of errors.

[24] Finally, we note that while the defense's strategy carried an inherent risk of some prejudice that added risk did not diminish the far greater prejudice that resulted from Keston's inexplicable silence as the prosecutor misused that same evidence for patently improper purposes. Our rules addressing character evidence implicitly recognize the fine yet vital distinction between the risk of prejudice borne by evidence introduced for permissible reasons and the clear prejudice that results from an uncured and flagrantly improper use of that same evidence

Thus, even if some potential prejudice arises from the introduction of certain evidence, this Court generally presumes that if properly instructed by judges and guided by counsel, juries are capable of considering evidence for one purpose but not another. See generally *Richardson v. Marsh*, 481 U.S. 200, 211, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987). In this case, an objection would have prompted the judge to inform the jurors that, counter to the prosecutor's suggestion, they could not convict Washington because he was the "type" of person who would commit the alleged crime, we then would presume that the jury heeded that instruction in rendering its verdict. On the other hand, Keston's silence allowed the prosecutor's improper use of that evidence as well as its improper suggestions to the jury of how to consider that evidence to go uncorrected. For this reason, and because this was a close case riding on Washington's credibility, see *infra*, Washington was prejudiced by his counsel's failure to object to the closing argument.

b

[25, 26] We also find that Keston's failure to object to the State's improper characterization of Tamara's statements to others constitutes a second instance of constitutional ineffectiveness. Again, we find the trial court's analysis of Keston's ineffectiveness and "trial strategy" to have been objectively unreasonable.

Keston's explanation of why he did not object to the prosecutor's characterization of statements not in evidence is again unconvincing. At the *Ginther* hearing, he explained that he feared an objection would do more harm than good because it would focus the jurors' attention on the prosecutor's statement even if the court

to object to that because you wanted it brought out didn't you?

A. That's correct.

Q. You were just going to use it in a different way than I used it.

A. It would be rather inconsistent of me to object.

J.A. at 311-12 (emphasis added).

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:27:34 PM	CHANDLER	WERE YOU NO LONGER AFRAID OF THE BLACK PEOPLE, SO YOU THRU THE GUN AWAY "I WANTED TO CALL MY FAMILY SO THEY COULD TELL ME WHAT TO DO ETC
1:28:27 PM		YOU WENT TO IVAN'S APARTMENT
1:29:03 PM		IDENTIFICATION EXHIBIT 109 "PHOTO OF IVAN VASQUEZ"
1:29:29 PM		BENCH CONFERENCE
1:30:25 PM	CHANDLER	YOU WENT TO MR VASQUEZ APT, NEXT THREE DAYS YOU DID NOT MAKE ANY PHONECALLS
1:31:17 PM		WHEN POLICE SHOWED UP AND KNOCKED ON DOOR YOU WENT TO BACK AND HID BEHIND A DOOR, YOU WERE ARRESTED AND THEY TOOK YOU TO CCDC, AT THAT TIME WHEN BOOKED IN THEY GAVE YOU INFORMATION ON HOW TO USE THE PHONE ETC
1:32:17 PM		YOU ASKED YOU AUNT IN SPANISH TO GO AND PICK UP GUN, YOU USED SLANG WORDS YOU USED THE WORD TOY, BECAUSE YOU KNEW SOMEONE WAS RECORDING
1:33:14 PM		YOU WERE NOT QUITE SURE SHE WOULD DO WHAT YOU ASKED HER TO DO
1:33:32 PM		YOU SAID TELL MOM I AM SORRY
1:34:04 PM		NEXT CALL YOU MADE WAS TO CRIMSON MAES, YOU SAID A DIFFERENT WORD IN SLANG GO GET THE THING BAM BAM, I KNEW THEY WERE LISTENING
1:34:56 PM		YOU BELIEVED IF THE POLICE COULD NOT FIND THE GUN IT WOULD HELP YOUR CASE, "I THINK THAT THEY WOULD LET ME OUT"
1:35:28 PM		WHEN YOU MADE CALL TO CRIMSON MAES YOU IDENTIFIED YOURSELF AS WEIZEL
1:36:51 PM		YOU WERE ABLE TO TAKE YOUR ITEMS AND PUT IN TRUNK OF CA, ONE OF THE ITEMS WAS A NOTE YOU WROTE
1:37:54 PM		BENCH CONFERENCE
1:39:12 PM	CHANDLER	IDENTIFICATION EXHIBIT 110 "LETTER WRITTEN BY ALBERT"
1:39:48 PM		OFFERS EXHIBIT / ADMITTED OVER THE OBJECTIONS
1:40:57 PM		I WAS TRYING TO BECOME A RAP ARTIST, HIP HOP
1:41:28 PM		ALBERT IS READING NOTE
1:42:56 PM		BENCH CONFERENCE
1:43:16 PM		COURT EXCLUDES EXHIBIT 110
1:43:59 PM		TALK ABOUT THE DAY YOU SHOT ELADIO, YOU WENT TO HOUSE THAT YOU WERE NOT TOLD TO GO THERE, WHEN YOU ARRIVED THE SCREEN WAS LOCKED
1:44:52 PM		MOST OF MY IMPORTANT ITEMS WERE THERE

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COURTROOM ONE

Time	Speaker	Note
1:13:57 PM		YOU ASKED GUN SHOP OWNER, IF HE COULD NOT GET YOU A GUN WHERE CAN I GET A GUN
1:14:31 PM		YOU WENT AND FOUND A GUN, FROM THIS GUY I USED TO BUY SOME WEED FROM,
1:15:24 PM		HOW MUCH DID YOU SPEND ON THIS WEAPON "\$75"
1:16:29 PM		YOU WENT TO WALMART JULY 11, YOU GAVE HIM \$30 TO BUY AMMO
1:16:59 PM		MR. PATTERSON CAME BACK AND GAVE YOU BOX OF AMMO
1:17:18 PM	COSBY	OBJECTION
1:17:26 PM	COURT	THAT IS WHAT I REMEMBER
1:17:33 PM	CHANDLER	YOU GOT THE AMMO, "I GOT IT HE HANDED IT TO ME AND I SAID THANKS"
1:18:19 PM		YOU WERE IN SUCH FEAR FOR YOUR LIFE, YOU BOUGHT AMMO AS SOON AS YOU GOT HANDGUN
1:18:53 PM		YOU WOULD NOT CARRY AN EMPTY HANDGUN "I WOULD EXPLAINS WHY"
1:19:42 PM		IT WAS IMPORTANT TO YOU TO GET BULLETS FOR THIS GUN ASAP
1:20:57 PM		LESS THAN 24 HOURS LATER AFTER YOU BOUGHT BULLETS YOU KILLED ELADIO "YES"
1:21:28 PM		TALK ABOUT CRUTCHES, MY WHOLE LEFT SIDE IS DISABLED, I CAN BARELY WALK,
1:22:27 PM	COSBY	WITHDRAWS OBJECTION
1:22:41 PM	CHANDLER	YOU WERE ABLE TO GET AWAY FROM SCENE WHERE YOU SHOT ELADIO, LESS THAN 30 SECONDS
1:23:02 PM		DID YOU SEE POLICE ARRIVE, YOU WERE GONE BEFORE POLICE GOT THERE, AS YOU WERE GOING ACROSS STREET, YOU SAW A MAN AT LAWN MOWER SHOP, YOU DID NOT SAY ANYTHING TO LAWN MOWER REPAIR MAN ABOUT NEEDING HELP, THEN YOU CROSSED RAGS TO RICHES AND YOU THRU GUN BEHIND RAGS TO RICHES "YES"
1:24:50 PM		YOU HAD YOUR CELLPHONE WITH YOU "YES, I BELIEVE IT WAS IN MY POCKETS IN MY PANTS YOU CALLED ELADIO AND DEBRA ABOUT 30 OR 40 TIMES THAT MORNING, "THEY WOULD NOT ANSWER I WAS TRYING TO CALL MY MOM NOT ELADIO" I CALLED THE HOME PHONE, I WANTED MY EVERYTHING, JUST THE LITTLE THINGS
1:26:27 PM	COSBY	OBJECTION
1:26:34 PM		I WILL ANSWER THIS, I HAD THE CELLPHONE IN YOUR POCKET YOU DID NOT CALL POLICE, AS YOU RAN BY RAGS TO RICHES YOU DUMPED GUN IN ALLEY
1:27:15 PM	COSBY	OBJECTION

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Cite as 226 F.3d 689 (9th Cir. 2000)

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ord This justification is not strategy, but absolute folly. First, it overlooks the fact that the prosecutor's statement that the "story never changed" was not based on any evidence in the record. The jury therefore had no basis to conclude whether the characterization was true or not, similarly, Keston had no way to rebut the prosecutor's assertion without also referring to conversations not in evidence. In deed, while Keston testified to the trial court that he had "intended" to argue to the jury that Tamara's statements to the doctor were inconsistent with her stories to others, he did not in fact do so. Although he referred to the doctor's notes that she had denied penetration, Keston certainly did not emphasize that this showed that Tamara's stories had been inconsistent. In fact, Keston himself echoed the prosecution's suggestion that the content of Tamara's discussions was in evidence when he argued that all of Tamara's statements came with Cora Beard by her side. "You heard from the witness stand, she said this said that. She always identified and repeated what was said." J.A. at 264-65. But, contrary to Keston's words, the jury had not in fact heard any witnesses testify as to what Tamara had told them.

Finally, although the trial court attempted to rationalize this "unpeachment defense," its reasoning is equally flawed. The trial court's explanation reads as follows:

[Keston] related that his lack of objection was grounded on trial strategy based on his awareness that the victim had given previous inconsistent statements during the investigative stage of the case. In proper cases a decision not to object to the prosecutor's trial efforts may be considered sound trial strategy. Cf. *Darden v. Wainwright*, 477 U.S. 168, 106 S.Ct. 2464, 2471, 2472, 91 L.Ed.2d 144 (1986). In this case defense counsel's strategy involved impeachment with inconsistent statements and the contrasting the same with the claim that

the victim's reporting of crime was consistent.

J.A. at 50. Like Keston's own words this explanation wholly fails to appreciate that "the claim" of consistency involved statements never admitted into evidence. Moreover, while the trial court cited *Darden v. Wainwright*, 477 U.S. 168, 182, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986) in support of its argument that a "decision not to object to the prosecutor's trial efforts may be considered sound trial strategy," *Darden*'s holding provides no support for its decision. The cited portion of *Darden* addresses prosecutorial misconduct that the Supreme Court found insufficient to constitute a due process violation, as part of the discussion, the court noted that "defense counsel made the tactical decision not to present any witness other than petitioner." *Id.* at 182, 106 S.Ct. 2464 (emphasis added). The decision in no way condones a lawyer's failure to object to plain misconduct as legitimate trial strategy.

In short, Keston's failure to object fell below an objective standard of reasonableness and constituted an omission outside the wide range of professionally competent assistance. Washington has shown that the failure to object was based on simple incompetence, and not on sound trial strategy. Because the trial court's conclusion merely echoed Keston's deeply flawed justification, its application of *Strickland* was objectively unreasonable.

3

[29] In addition to finding constitutionally defective performance, we also believe that the failure to object to these statements prejudiced Washington's case. As both parties agree, this trial was a credibility contest. There was no evidence in the record indicating Washington's guilt outside of Tamara's own allegations. Thus, outside of the substance of Washington's and Tamara's testimony, nothing was more important to the case than the indicia that one story was more believable than the other. In such a close case, the prosecu-

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Circuit 24 F.3d 1387 (6th Cir. 1994)

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cases, the end result would probably have been the same regardless of which test was used. Nevertheless, we find it necessary to clarify our doctrine regarding when prosecutorial misconduct in a closing argument constitutes reversible error for three reasons. First, the use of three different standards is confusing both for lower courts and for litigants. Second, even if everyone usually reaches the same net result, the process of reaching this result is more difficult when our doctrine is so murky. Third, and most important, mistakes sometimes arise, though perhaps only infrequently, in which the choice of doctrine determines the result. One very important example of this is found in the case of *Solven*, in which isolated remarks by the prosecutor were so prejudicial that a new trial was necessary. 937 F.2d at 1157. Had the panel applied the *Thomas* test, it could not have reached this result. The court made this manifestly clear when it held

There are instances where a single misstep on the part of the prosecutor may be so destructive of the right to a fair trial that reversal is mandated. See *Pierce v. United States*, 86 F.2d 949 (6th Cir. 1936). We realize that such instances may be rare, but we believe this case exemplifies a single misstep so destructive to defendant's right to a fair trial that it constitutes reversible error.

Id. at 1150. It turns out that the instant case presents a second example.

Just last year, the en banc court expressly applied the *Bess* test when we considered the issue of prosecutorial misconduct in a closing argument in *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992). In light of this fact, and for the reasons stated in *Bess*, not only will we apply the *Bess* approach in the present case but we also believe that *Bess*

1992) (en banc) (applying *Bess* test), cert. denied, — U.S. —, 113 S.Ct. 2909, 125 L.Ed.2d 668 (1993); *United States v. Warner*, 971 F.2d 1189, 1205 (6th Cir. 1992) (applying *Thomas* test); *United States v. Driscoll*, 970 F.2d 1472, 1484–85 (6th Cir. 1992), cert. denied, — U.S. —, 113 S.Ct. 1056, 122 L.Ed.2d 362 (1993) (applying *Leon* test); *United States v. Chambers*, 944 F.2d 1253, 1272 (6th Cir. 1991), cert. denied, — U.S. —, 112 S.Ct. 1217, 117 L.Ed.2d 455 (1992) (applying *Leon* test); *United States v.*

ought to be used in all subsequent cases involving non-flagrant improper prosecutorial remarks. We will also use the factors introduced in *Leon* to elucidate the concept of “flagrancy” when applying the *Bess* test.

2 The Prosecutor's Remarks in the Present Case Were Improper

Under the *Bess* approach, our first task is to determine whether the prosecutor's remarks in the present case were improper. In *United States v. Krebs*, 783 F.2d 1166, 1176 (6th Cir. 1986), cert. denied, 479 U.S. 930, 107 S.Ct. 400, 93 L.Ed.2d 353 (1986), the prosecutor made the following statements in her closing argument: “I want to suggest to you that in this trial testimony [the witness] was telling the truth. Basically, she had no reason to lie.” Even though we recognized that “I suggest” or “I submit” is not equivalent to “I believe”, we found that “the effect of the two statements taken together can be reasonably construed to be based on personal belief.” *Id.* at 1176–77 (citing *Bess*). We not only found that this constituted misconduct calling for the trial court to take corrective measures, but we also characterized the prosecutor's conduct as “inexcusable.” *Id.* at 1177.⁹

Similarly, in *United States v. Dandy*, 998 F.2d 1344, 1353 (6th Cir. 1993) (citing *Bess*), we held: “It was [improper for the prosecutor to state (in his closing argument) that (a witness) is honest. Such a statement conveys a conviction of personal belief regarding the witness's veracity.” The error might have been reversible had the trial court not immediately instructed the jury that all assertions are to be made from the evidence. See also *United States v. Hart*, 640 F.2d 856, 858–59 (6th Cir.) (holding that various expressions of personal belief by the prosecutor in closing argument were improper warrant-

Solven, 937 F.2d 1146, 1156–57 (6th Cir. 1991) (applying *Ashworth* standard but citing *Bess* with approval).

⁹ Ultimately the *Krebs* court found that in light of the substantial evidence of guilt and the trial court's efforts to take corrective measures to eliminate the resulting prejudice, the misconduct did not justify reversal. 783 F.2d at 1177.

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COURTROOM ONE

Time	Speaker	Note
10.24.46 AM		WHO ELSE DID YOU TALK TO, HE WAS NOT A FRIEND, I TOLD HIM TO GET THE THING, DO YOU KNOW OF ANYBODY HAS THAT GUN
10.25.33 AM		THERE WAS A GUY IN FRONT OF STORE OF RAGS TO RICHES I BELIEVE HE GOT THE GUN, I JUST HAD SOX AND BOXERS
10.26.34 AM		DID YOU PLAN ON KILLING MR. ROBLEDO "NO"
10.27.11 AM		WERE YOU THERE THAT DAY TO AMBUSH YOUR MOM'S BOYFRIEND "CAN I SPEAK MY MIND", IF I WANTED TO KILL MY MOM OR ROBLEDO, I COULD GO IN THERE AND GO TO MY ROOM AND GET SOMETHING TO EAT ETC
10.28.14 AM		WHEN HE TOLD YOU HE WAS GOING TO GET PISTOLA "THAT IS A PISTOL" THAT WAS NOT HIS AMMO IN GARAGE
10.28.59 AM		I KNEW HE HAD A WEAPON, I USED TO SMOKE MARIJUANA I WAS LOOKING FOR MONEY AND I SAW A GUN IN HIS DRAWER
10.29.40 AM		I THOUGHT I WAS IN DANGER
10.29.53 AM		BENCH CONFERENCE
10.30.37 AM	COURT	GONNA TAKE A BREAK
10.31.21 AM		JURY EXCUSED FROM COURTROOM
10.31.36 AM	OFF RECORD	
11.03.22 AM		COURT IN SESSION JURY BEING SEATED IN BOX, DFT AND ALL PARTIES PRESENT
11.03.58 AM	COURT	INSTRUCTS JURORS GOING TO AN EARLY LUNCH BE BACK BY 12.45 P.M
11.04.37 AM	RECESS	
12.49.46 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES ARE PRESENT
12.50.29 PM	CHANDLER	DFT PUT FORWARD THAT THE VICTIM WAS A FIRST AGRESSOR, ANY TYPE OF SPECIFIC CONDUCT
12.51.31 PM		WHAT TRAIT DO YOU THINK IS DELIBERATE AND WILLFUL MURDER
12.51.52 PM	CHANDLER	RESPONDS, NOW WE HAVE AN OPPORTUNITY THAT OUR VICTIM WAS NOT THE AGRESSOR
12.52.26 PM	COSBY	AS FAR AS THE SITUATION OF THE JAILER, HAD NOTHING TO DO WITH HIS CHARACTER ETC
12.52.50 PM	CHANDLER	READS RULE 404-A-2 SEC B
12.54.32 PM	COURT	WILL LET YOU GO AHEAD AND DO IT, BETTER WAY TO DO IT
12.54.50 PM	COSBY	I WILL ASK YOU TO RE VISIT SEXUAL ISSUE
12.55.21 PM	COURT	OBJECTION NOTED
12.55.43 PM	DFT	COMMENTS

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COURTROOM ONE

prosecution witness

Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:36 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W 6TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER. "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE CROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER. "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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COURTROOM ONE

Time	Speaker	Note
2:14:36 PM	COURT	HE HAS BECOME EXPLOSIVE AND SHOOTS OFF HIS MOUTH, GO TALK TO HIM AND SEE WHAT WE WILL DO, WE ARE CLOSE TO THE END
2:15:25 PM	RECESS	
2:36:30 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
2:37:06 PM	COSBY	HAVE DISCUSSED WITH MY CLIENT HIS OPTIONS HE HAS STATED HE FEELS HE NEEDS ME, I TOLD HIM EITHER I REPRESENT HIM OR HE REPRESENTS HIMSELF, I CAUTIONED HIM HE NEEDS TO OBEY COURT RULES, HE SAID HE WOULD RATHER HAVE SOMEONE ELSE BUT HE NEEDS ME, I EXPLAINED TO HIM AS FAR AS THE LAST WITNESS, THE WITNESS TELLS ME HE DOES NOT REMEMBER IN FRONT OF THE JURY, SO RATHER THAN CALL SOMEONE TO STAND THEY DON'T REMEMBER I JUST DON'T ASK THAT QUESTION, THERE ARE QUESTIONS THAT ARE NOT ASKED FOR REASONS
2:39:17 PM	COURT	LET THE RECORD REFLECT THAT MR RAMIREZ HAS RETURNED TO THE COURTROOM AND MR COSBY WILL BE CONTINUING HIS REPRESENTATION, NOT ANOTHER OPPORTUNITY TO CHANGE COUNSEL
2:39:55 PM		ADVISES DFT THAT THERE IS AUTHORITY THAT ALLOW YOU TO SIT IN ANOTHER ROOM TO WATCH TRIAL, IT IS AN OPTION IF YOU CONTINUE TO BE DISRUPTIVE YOU WILL SIT IN ANOTHER ROOM AND VIEW TRIAL BY VIDEO
2:40:48 PM	COSBY	HE ASKED ME IF IT WAS BETTER TO SIT IN ANOTHER ROOM, I TOLD HIM IT WOULD BE AGAINST HIS INTEREST TO VIEW BY VIDEO
2:41:36 PM	CHANDLER	I DON'T HAVE ANY XEX FOR MR. RAMIREZ BROTHER OF DFT
2:42:28 PM	COSBY	I HAVE TOLD HER WHAT SHE CAN SAY AND CANNOT SAY
2:42:40 PM		BENCH CONFERENCE
2:44:43 PM	COSBY	REGARDING PHOTO OF IVAN VASQUEZ SHOWING PHOTO OF HIM IN BOOKING, AND RECEIVED THIS LETTER
2:46:00 PM	CHANDLER	RELEVANCE TO THE PICTURE, COURT WILL NOT ALLOW PHOTO
2:47:19 PM		JURY BEING BROUGHT INTO COURTROOM
2:48:04 PM		OFF RECORD
2:51:51 PM		#3 WITNESS HESQUIA RAMIREZ CALLED BY COSBY / SWORN / DEX
2:52:03 PM		JURY BEING SEATED IN BOX
2:53:09 PM	CHANDLER	MR JOSE RAMIREZ, THE STATE DOES NOT HAVE ANY QUESTIONS

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
2:54:31 PM		SHE IS ALBERT'S OLDER SISTER
2:54:44 PM		HOW OLD WERE YOU WHEN ELADIO ROBLEDO CAME ABOUT
2:55:20 PM		SHE MOVED OUT AS SOON AS SHE WAS 18 YEARS OLD
2:55:37 PM		YOUR BROTHER LIVED WITH YOUR MOM AND MR. ROBLEDO FOR A NUMBER OF YEARS
2:55:50 PM		WERE YOU EVER AWARE OF ANY ISSUES OF YOUR BROTHER AND MR. ROBLEDO
2:56:52 PM		MY MOM WOULD LET ME KNOW EVERYTHING, BECAUSE I WOULD GO EVERYWHERE WITH MY MOM
2:57:22 PM		DID YOUR BROTHER EVER COME LIVE WITH YOU "YES BACK IN THE BEGINNING OF 2007, HE STAYED WITH ME OFF AND ON ABOUT 3 OR 4 MONTHS"
2:58:04 PM		HE JUST LEFT, HE WAS GOING THRU HIS OWN THINGS
2:58:23 PM		WERE YOU AWARE OF ANY PHYSICAL ISSUES BETWEEN ALBERT AND ROBLEDO
2:58:54 PM		HE WAS REAL JEALOUS OF MY BROTHER, HE WANTED MY MOM TO HIMSELF, HE WOULD
2:59:23 PM	CHANDLER	OBJECTS RULES OF HEARSAY, VICTIM IS NOT HERE
2:59:56 PM	COSBY	I WAS PRESENT SOMETIMES HOW HE WOULD TREAT HIM
3:00:17 PM		DID YOU EVER SEE ANYTHING BY ALBERT THREATENING, HE WOULD GET UPSET
3:00:53 PM		FAMILIAR WITH BROKEN WINDSHIELD, WAS NOT PRESENT WHEN IT HAPPENED
3:01:37 PM		HE WAS ON CRUTCHES FOR A WHILE
3:02:24 PM		DID YOU SEE HIM AROUND JULY 2007, HE WAS STILL LIMPING
3:03:01 PM		SHE WAS NOT LIVING IN HOUSE WITH HER MOTHER AND ROBLEDO
3:03:19 PM		DID YOU RECEIVE A PHONE CALL AND TALK TO ALBERT AFTER HIS ARREST,
3:04:17 PM		WERE YOU AWARE OF ISSUES HE WAS HAVING, HE SAID SOMEBODY WAS AFTER HIM
3:04:45 PM	CHANDLER	THIS IS HEARSAY
3:05:10 PM	COSBY	STATUS OF YOUR BROTHER, HE HAS ISSUES
3:05:48 PM	CHANDLER	XEX - YOU SAY THE COPS WERE CALLED AND NOTHING WAS EVER DONE
3:06:24 PM		IF SOMETHING WAS DONE MAYBE IT WOULD NOT HAVE GOT THIS FAR
3:06:40 PM		THERE IS NO JUVENILE JUSTICE HERE

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ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:39:23 PM		ALL YOU SAW WAS SHIRT ON CAR AND SHOES ON GROUND
3:39:55 PM		THIS CAR LOOKED LIKE IT HAD BEEN MOVED, BECAUSE IT WAS FURTHER UP
3:40:30 PM		WHEN DEBRA CAME OUT SHE WAS SITTING ON PORCH STEPS
3:40:53 PM		WITNESS EXCUSED
3:41:33 PM		#2 WITNESS GRACE FINKEY CALLED BY MORRIS / SWORN / DEX
3:42:37 PM		LIVES IN CLOVIS "HOUSEWIFE" HAS 3 BOY'S
3:43:02 PM		WHAT WERE YOU DOING ON JULY 12TH WORKED AT SUTTON'S BAKERY AND HOME CARE,
3:43:41 PM		WENT TO LUNCH AT JALISCO'S SPENT ABOUT 30 MINUTES
3:44:03 PM		GOT IN HER CAR AND WENT BACK ON 6TH STREET HEADED TOWARDS THORNTON
3:45:03 PM		SOMETHING CAUGHT HER EYE SAW TWO PEOPLE RUNNING.
3:45:46 PM		DESCRIPTION OF OLDER GUY RUNNING THINK HE HAD A HAT ON
3:46:22 PM		YOUNGER MAN RUNNING SLENDER, HE WAS WEARING SHORTS, A POLO SHIRT THINK IT HAD GREEN STRIPES THE YOUNGER ONE WAS CHASING THE OLDER ONE
3:47:29 PM		THE OLDER GUY HAD FALLEN DOWN AND YOUNGER GUY HAD HIS ARM EXTENDED
3:48:40 PM		SHE THOUGHT SHE HEARD TWO POPS
3:49:00 PM		LAST THING SHE REMEMBERS SEEING, LOOKED BACK AND OLDER ONE WAS ON GROUND
3:50:10 PM		SHE DIALED 911 WHILE ON HER WAY TO THORNTON, SHE WAS CONCERNED
3:50:56 PM		GAVE A STATEMENT TO LAW ENFORCEMENT
3:51:08 PM	COSBY	XEX - DO YOU RECALL BEING INTERVIEWED ON DAY OF EVENT
3:51:44 PM		REMEMBERS DAN AGUILAR TALKING TO HER
3:52:13 PM		TOLD THE OFFICER THAT SHE REMEMBERED 3 SHOTS, YOU WERE ALSO ASKED WHAT THE PERSON LOOKED LIKE
3:53:43 PM		HE HAD A POLO SHIRT WITH GREEN STRIPES HE IS THE ONE WITH THE GUN
3:54:51 PM		THINKS THE SHORTS WERE BLUE JEAN DEMIN TYPE
3:55:24 PM		DID NOT SEE ANY SHOES, SAW THE PERSON WITH ONE ARM OUT STANDING A LITTLE TO THE SIDE
3:56:28 PM		DOES NOT REMEMBER SEEING ANYONE ELSE OUT THERE, SAW THE OLDER FELLOW FALL BACKWARD

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

*Restoring cred. b. 1.14
Prosecutorial misconduct*

Time	Speaker	Note
3:15:21 PM	CHANDLER	IF DFT TAKES STAND ANY SAYS IT THEN I CAN CALL WITNESS BACK
3:15:41 PM	COSBY	THAT IS WHY I AM TRYING COURT TO MAKE A RULING OUT OF HIS PRESENCE
3:16:32 PM	COURT	CONCERNED THAT THE QUESTION ITSELF PRESENTS PROBLEMS THAT ARE NOT PERTINENT TO THIS CASE, WITH THESE KIND OF ALLEGATIONS I WILL NOT LET YOU ASK THAT QUESTION
3:17:10 PM	COSBY	OBJECTING
3:17:19 PM	COURT	BELIEVES IT IS AN INAPPROPRIATE QUESTION
3:17:30 PM	RECESS	
3:28:30 PM		COURT IN SESSION JURY DFT AND ALL PARTIES PRESENT
3:29:33 PM	CHANDLER	RDEX - WITNESS SAM SAIZ, DO YOU RECALL INTERVIEW WITH POLICE DEPT
3:30:11 PM		DO YOU RECALL SPEAKING TO POLICE OFFICER AT THE SCENE
3:30:24 PM		ARE YOU BEING TRUTHFUL TODAY, WERE YOU TRUTHFUL AT THE TIME OF THE INCIDENT
3:30:57 PM		WHAT DID YOU TELL POLICE OFFICER WHEN YOU RAN TO THE FRONT OF YOUR HOUSE ETC
3:32:01 PM		DOES NOT RECALL ELADIO SAYING OW
3:32:53 PM		YOU TOLD POLICE OFFICER THAT DAY ABOUT NOT SEEING GUN
3:33:50 PM		RECALLS TELLING HIS MOM DO NOT GO OUTSIDE "YEAH BUT SHE IS STUBBORN SHE FOLLOWED ME TO MAILBOX"
3:34:16 PM		DEBRA HAD A CELLPHONE, SHE TOLD ME CALL JOE "HER OLDEST SON"
3:34:43 PM		TOLD POLICE HE WAS BLEEDING, COUGHING UP BLOOD, COMING OUT OF NOSE AND MOUTH
3:35:16 PM		TOLD THE POLICE OFFICER I SAW ONE OF HIS RED SHOES, ETC
3:36:11 PM		POLICE OFFICER SAID HE WAS WEARING A RED SHIRT RED SHOES, YOU SAID I THINK WHITE SHORTS
3:36:45 PM		DO YOU RECALL THAT HE SAID WHAT DID HIS HAIR LOOK LIKE
3:37:07 PM		RECALLS TELLING OFFICER HE'S GOT A LONG NOSE
3:37:16 PM		HOW SURE ARE YOU IT WAS ALBERT, I SAID 100%, I DID NOT SEE NOBODY ELSE
3:38:00 PM		DO YOU HAVE ANY REASON TO LIE OR POINT THE FINGER AT SOMEONE, ARE YOU TELLING ABSOLUTE TRUTH TODAY "YES SIR"
3:38:18 PM	COSBY	RXEX - YOU HAVE NO REASON TO TELL ANYTHING OTHER THAN THE TRUTH, I SAW HIM WEARING A RED SHIRT

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED

2000 JAN 13 PM 3:33

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

434

ALBERT RAMIREZ,

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing certain photographs of the defendant at trial and for cause would state,

1. Counsel for defendant has reviewed the contents of the investigating officer's file
The file contains several photographs of the defendant which are prejudicial and have no probative value. The photographs could be interpreted to suggest involvement in a gang and that inference is prejudicial to the defendant. The evidence in this case does not suggest any gang involvement and the photographs should be excluded by the court.
2. The photographs should be excluded under Rule 11-401 as they are not relevant. The New Mexico rules of evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence".
The photographs in question were not used by the witnesses to identify defendant.

RP 253

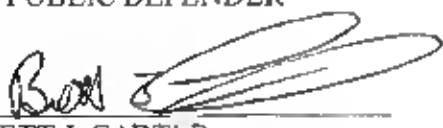
The photographs do not contain any information that makes the existence of any fact that is of consequence to the determination more or less probable.

3. The photographs should also be excluded under Rule 11-403 in that the photographs are more prejudicial than probative. The photographs (which are attached as defense exhibit A) do not have any probative value in this prosecution. The admission of the photographs is extremely prejudicial to the defendant in that they suggest involvement in a gang or other criminal activity

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any of the above referenced photographs into evidence at trial and further relief as the Court deems just and proper

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE


PUBLIC DEFENDER DEPARTMENT


RP 254

4 There is no doubt that Mr Robledo's death is due to several wounds inflicted by a firearm.


5. The photographs have no medical value and would only serve to create emotional feelings in the jury that would prejudice them against Mr. Ramirez

WHEREFORE, defendant Albert Ramirez requests this Court to rule pre-trial that the State cannot offer any photographs of the deceased at trial.

Respectfully submitted,
HUGH W. DANGLER
CHIEF PUBLIC DEFENDER
By:


Brett J. Carter
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
Counsel for Defendant

This will certify that a copy of the foregoing was delivered/faxed to the District Attorney's office on January 17th, 2009.


Brett J. Carter
Counsel for Defendant

RP 271

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

INITIALS
COURT
FILED

2009 JAN 14 AM 8:48

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

ALBERT RAMIREZ,

Defendant.

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing a letter the officers allege the defendant wrote and for cause would state;

- 1 Counsel for defendant has reviewed the contents of the investigating officer's file. The file contains a letter that contains prejudicial comments (attached as defendant's exhibit b). The letter looks like it is addressed to Albert and there is no evidence such as a handwriting exemplar to prove the defendant wrote the letter. It would be extremely prejudicial to the client to allow this information before the jury especially if defendant didn't write the letter. The letter does not have a date and it is not known when it was written or who wrote it. The letter contains references to "Jack yall" and phrases such as "Ima blast yall niggaz" which a juror would take as extremely offensive. Besides being undated, it appears the letter is addressed to Albert. The letter does not make any mention of the deceased in this case or any references to his or Albert's family.


RP 272

2. The letter should also be excluded since a foundation can not be laid to show that the defendant wrote the letter
3. The letter should also be excluded under Rule 11-403 in that the comments in the letter are more prejudicial than probative. The letter does not have any probative value in this prosecution. The admission of the letter is extremely prejudicial to the defendant due to the comments made in the letter

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present or mention any of the comments in the letter into evidence at trial and for further relief as the Court deems just and proper

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By 
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

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PUBLIC DEFENDER DEPARTMENT

RP 273

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

STATE OF NEW MEXICO,

Plaintiff,

vs.

ALBERT RAMIREZ,

Child.

No. D-0905-CR-0200700604

454

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing the testimony of Dennis Fite at trial and for cause would state;

1. Counsel for defendant has reviewed the contents of the investigating officer's file. The file contains a report from Agent Mulligan involving an interview of a gun shop owner. Dennis Fite of Crosshairs gun shop told the agent that about three weeks prior to July 13, 2007 that the defendant had been in the store and attempted to purchase a firearm. Due to defendant's age he refused to sell him a firearm and contacted law enforcement. This information is stale, prejudicial and has no probative value. The attempt to purchase a firearm two to three weeks prior to the incident in question is not relevant and is stale. A firearm was not purchased and the statements of Mr. Fite are prejudicial to the defendant.
2. The attempted purchase of a firearm two to three weeks prior to this incident should be excluded under Rule 11-401 as they are not relevant. The New Mexico rules of evidence define "relevant evidence" as "evidence having any tendency to make the

RP 275


existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". The testimony of Mr. Fite does not contain any information that makes the existence of any fact that is of consequence to the determination more or less probable.

3. The statements should also be excluded under Rule 11-403 in that the statements are more prejudicial than probative. The admission of the statements would be extremely prejudicial to the defendant in that they suggest involvement in other criminal activities.

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to present any of the above referenced information from Mr. Fite into evidence at trial and further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE.



RP 276

IN THE NINTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF CURRY

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED MY OFFICE

2020 JAN 14 PM 2:46

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-0905-CR-0200700604

ALBERT RAMIREZ,

Defendant.

C. J. MULLIGAN
DISTRICT ATTORNEY
COURT

434

MOTION IN LIMINE

COMES NOW the defendant, by and through his counsel of record Brett J. Carter, District Public Defender, and hereby respectfully moves this Court for an order preventing the State of New Mexico from introducing into evidence any mention of a restraining order obtained by the victim or defendant's mother and for cause would state,

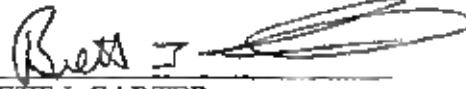
1. The Clovis Police department and other witnesses have indicated that the victim and/or the defendant's mother had sought to obtain a restraining order preventing the defendant from having contact with them. Agent Mulligan of the District Attorney's office during his investigation of the case contacted the District Court to inquire about the restraining order. The District Court Clerk indicated there were no requests or filings by either the victim or defendant's mother to obtain a restraining order.
2. Any reference to a restraining order should be prohibited by the court until such time as a foundation can be laid to show that a restraining order exists.
3. The admission of a restraining order between the victim, defendant's mother and defendant is extremely prejudicial to the defendant.

RP 279

WHEREFORE, the defendant prays this Court issue an Order requiring the State not to mention or infer that a restraining order existed between the defendant, the victim or defendant's mother and for further relief as the Court deems just and proper.

Respectfully Submitted,

HUGH W. DANGLER
CHIEF PUBLIC DEFENDER

By: 
BRETT J. CARTER
District Public Defender
Clovis District Office
800 Pile, Suite A
Clovis, NM 88101
(505) 769-1991

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS DELIVERED/MAILED
TO OPPOSING COUNSEL ON THE DATE OF FILING STAMPED ABOVE


PUBLIC DEFENDER DEPARTMENT

RP 280

STATE v. ALBERT J. RAMIREZ CR 07-434

CR1 CHAMBERS

Prosecutorial
CR1 CHAMBERS
M. L. G. - 1000
Ex. 5 +
110

Time	Speaker	Note
3:39 27 PM	Chandler	Relevance is that it indicates he will commit murder. He expressed thoughts of murder before murder has happened. Note goes to premeditation.
3:40 20 PM	Carter	Note says "Albert" at the top - doesn't know if he wrote the note.
3:40 41 PM	Chandler	Weasel is Albert and note was found in the trunk of his car. Randy Pitcock found it in his car.
3:41 16 PM	Carter	Not sure it was written by Albert. More prejudicial than probative. Eye witness testimony is fairly good.
3:41 40 PM	Chandler	Thinks they have good eye witnesses. Trying to take this to first degree murder instead of second degree. Addressing contents of note. Reads note.
3:43 40 PM	Chandler	Review of note. Could make argument to the jury that this is Dft's mind set - he's not afraid to shoot someone if they mess with him. Victim served him with trespass notice - his mindset is that he could kill him.
3:45 42 PM	Carter	Can't tell if the note is written by Albert - found in jeans at a car that was left at his mother's house. Nothing to indicate that the note was written by Albert. More prejudicial than probative. No effort was made to see who wrote it.
3:46 43 PM	Judge	Attempt to purchase a firearm.
3:46 54 PM	Chandler	404b argument - probative vs prejudicial. Demanded to buy handgun. Manager of gun shop suspected something suspicious - doesn't sell it to him.
3:47 31 PM	Judge	Restraining order.
3:47 35 PM	Chandler	Dft served with restraining order - no trespass order.
3:47 54 PM	Carter	Officers made some mention that restraining order - no restraining order out there.
3:48 35 PM	Chandler	Dft created two problems before murder - broke out victim's vehicle window and broke out his mom's house window. Filed no trespass order and he comes back and kills him.
3:49 28 PM	Carter	Gun.
3:49 37 PM	Chandler	Witness said there was a hand gun with a long barrel. Albert's cousin was found with similar gun that was used in the murder.
3:50 26 PM	Judge	Can make rulings next week.
3:50 38 PM	Carter	Motion about a statement made to Steve Hawkins.
3:50 51 PM	Reeb	Won't do that.
3:50 54 PM	Carter	Got a copy of the new autopsy.
3:51 05 PM	Chandler	Was amended because error was caught in the original report.
3:51 44 PM	Carter	Walmart employee testimony reviewed.
3:52 04 PM	Reeb	Lots of witness. Lot of chain of custody witnesses. Still at 30+ witnesses.
3:52 28 PM	Carter	Will interview them next week.

STATE v. ALBERT J. RAMIREZ CR 07-434

CR1 CHAMBERS

Time	Speaker	Note
3:28:15 PM	Judge	Announcement of case. This is a meeting to review some of the Motions that have been filed. Counsel for defendant and state are here. Trial set for January 26 - 5 day trial.
3:29:08 PM	Judge	Knows that State has not had opportunity to respond to Motions Dft. has gone through referral to restore his competency After that he is found to be competent September 16, 2008 - date of Order. Mr. Carter has stated that he was unable or unwilling to assist in defense.
3:30:11 PM	Carter	More of an unwillingness on his part Is probably getting advice from inmates at the jail. Went to visit him today and tried to get answers from him but were unable Is not actively cooperating Has done extensive preparation. Wants to be fully prepared for trial without his assistance
3:31:28 PM	Judge	Ruled that there will be no interpreter for the family. One Motion refers to photos in file. Testimony of Dr. Burness -
3:32:08 PM	Carter	If there is not presentation of mental health defense, her testimony is not admissible That's the extent of the motion
3:32:31 PM	Chandler	Don't intend on putting on doctor, unless they raise that issue.
3:32:55 PM	Carter	If they argue to jury on mental health, could put her on.
3:33:20 PM	Chandler	Will probably not call the Las Vegas doctor.
3:33:36 PM	Carter	Researched insanity defense Would not work in this case based on facts that State has. Temporary insanity - might be closest this he suffers from - but there is no such thing as temporary insanity in this state. Some things that their witnesses will testify might be helpful to defense
3:34:48 PM	Carter	Some actions that defendant did at detention center prevented them from hiring expert. Don't have an expert Dft won't discuss the case so expert can't interview him. No experts at trial.
3:35:44 PM	Judge	Photos of deceased - hasn't seen them.
3:36:07 PM	Chandler	Prior to doctor testifying, will get together and go over pictures that will be introduced
3:36:37 PM	Judge	If those are limited, will take care
3:36:46 PM	Chandler	Handwritten note - probative vs
3:37:15 PM	Chandler	Photos of defendant reviewed Identifies some of his phone calls
3:37:52 PM	Reeb	Not sure of that
3:37:55 PM	Chandler	Identifies himself in the rap song The back of the picture has the word "weasel" - <i>GARY AFFILIATED PRESIDENTIAL</i>
3:38:14 PM	Carter	Might need actual photo
3:38:28 PM	Chandler	Might stipulate that he goes by another name. Note was found in his car. Shows Dft's state of mind at the time of offense
3:39:09 PM	Judge	Inclination is that unless it is tied in better, doesn't see the relevance

SEE
Inmate's
evidence

→ Carter
Sub. 711a

SEE

EF. In effect the
assistance of counsel
leave e. Kell and
Amara - Stephenson

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ALL PAPERS OR FACTS - And Exhibits
Records documents . cases
Relevant to my case

C
E. F.

INEFFECTIVE ASSISTANCE
ON HABEAS PETITION -

SEE HER letter saying
we did not fully meet and
she would not communicate
with me at all. I tried
to call every week and she
wouldn't speak to me

C
HABEAS. counsel did not
argue these issues I bring
now in my Amended
PETITION

IF she would OF I would
OF GOT AN Evidentiary
Hearing And proved
trial Counseling ineffectiveness

X.

INEFFECTUAL
ASSISTANCE
OF HUSBAND'S
COUNSEL

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HABEAS ATTORNEYS

Liane E. Kerr.

F. Both. AMANDA STEPHANSON

SHE failed to raise issues
that had merit and would
win.

SHE refused to properly
assist in HABEAS AMENDED
PETITION, OR REQUEST FOR EXTENSION
FOR FUTURE INVESTIGATION! Collection of
materials is requested.

INEFFECTIVE ASSISTANCE OF
BOTH HABEAS ATTORNEYS
ANANDA STEPHENSON AND
LANCE Z. KERR FOR NOT
REQUESTING TRIAL CLOSING
ARGUMENT. I REQUESTED
BOTH HABEAS ATTORNEY FAILED
TO PROVIDE EFFECTIVE
ASSISTANCE IN HABEAS
PROCEEDINGS AND ARGUE
CERTAIN ISSUES. I
WANTED ARGUED.

AF FIDAVIT I asked Liane E. KUI
 HABEAS ATTORNEY TO FILE
 1/19/18
 ISSUES correctly Spec. a. No.

I contacted AMANDA STEPHENSON
 SEVERAL TIMES LET HER KNOW THE
 DEADLINE WOULD BE SOON TO FILE THE
 AMENDED HABEAS PETITION EACH TIME
 SHE WOULD SAY SHE WOULD FILE IT AND
 REQUESTED THE TRANSCRIPT FROM THE
 COURT CLOSING AND OPENING ARGUMENT
 REBUTAL AND OF SPECIFIC WITNESSES
 SAM SAIZ, DENNIS FITE, OFFICER HOWARD,
 TONY BARRAZA, SANDY LOOMIS, CLARE LEE
 BUT NEVER GOT THE TRANSCRIPT OR
 DISCOVERY OR MY MENTAL HEALTH
 RECORDS FROM PRISON NM DEPT. COR.
 TO SHOW I WAS SUFFERING FROM
 SCHIZOPHRENIA + PTSD + DEPRESSION
 AT TIME OF TRIAL + POSSIBLY TIME
 OF CRIME I WAS INSANE OR
 INCAPACITATED AND NOT COMPETENT
 I WAS DECEIVED BY AMANDA
 STEPHENSON POST CONVICTION HABEAS
 ATTORNEY SHE DID NOTHING FILED
 NOTHING ONLY LIED CONTINUOUSLY →
 TO ME. NO LOYALTY. →
 AND THIS CAUSED ME NOT
 TO BE ABLE TO PROPERLY →

5/9/18

consult with my new private
 ATTORNEY LIAM REE and
 ALSO APPRIASE COUNSEL WAS
 INEFFECTIVE FOR NOT CLAIMING
 INSUFFICIENT EVIDENCE TO CONVICT
 AND DOUBT JEOPARDY ON THE
 TWO COUNTS OF TEMPORARY W/
 EVIDENCE AND I TOLD HIM
 TO CHECK CLOSING ARGUMENTS
 THAT WAS PROSECUTORIAL
 MISCONDUCT. BY CALLING ME
 A MENACE TO SOCIETY, LIE,
 MANIPULATOR, cold blooded killer NO
 EVIDENCE TO SUPPORT THIS AND
 ASKING WITNESS SAM SAIZ IN
 DIRECT EXAM ALL YOU TELLING ME
 FROM AND AT THE TIME OF INCIDENT?
 THERE IS NO REASON FOR YOU TO LIE?
 VOUCH FOR WITNESS. BOOSTING CREDIBILITY
 AND OF EXHIBIT 110 LETTER STATING
 OF SHOOTING PEOPLE, JACKING SODOMY
 DEUGS KILLING, WAS ADMITTED READ
 TO JURY THEN EXCLUDED, BUT USED
 IN CLOSING ARGUMENT ➔

Showing pictures of deceased gruesome
 should of objected.
 ask for hearing of come change too
 6/19/18

And appellate court failed to argue
 there was conflict of interest
 between myself and trial counsel
 I wanted de Maxine Swartz called
 as a witness to my sanity & competency,
 mental illness, and in and Faking,
 Lie and Truthful my credibility
 character witness.

All this was ineffective
 assistance of counsel.

TRIAL counsel failed to question
 all jury members After I fell
 down and they saw my leg
 shakes. Failed to request a
 mistrial and failed to object
 in closing Argument & Rebuttal
 And examination of my witnesses
 I was prejudiced and
 denied my right to effective
 assistance of counsel

I was denied my due process
 rights and a fair trial

5/19/20

5th and 14th advertisement and
6th advertisement and violation
of Federal law and Federal Rights
and Federal and United States
laws and constitution.

Between Jan. 15th and Feb 29th 2018
I had no pens and paper to write
and not able to speak to
my Habeas attorney have told
I spoke to HER 10 minutes in
about ^{2 1/2} months, we had
About no time proper to file

5/9/2018

petition, research, go over voluminous
transcript, records, discovery to
fully claim all of our claims raised.

Ineffective assistance of trial counsel
Ineffective assistance of appellate
counsel

Improper comment on silence

- 1) Improper prior bad acts evidence
Tampering with evidence double jeopardy
Prosecutorial misconduct
cross examinations, direct examination,
closing argument,
Incompetency to stand trial
revelation of competency
Insufficient evidence to convict
court improper exclusion of
Sex Abuse.

Jury saw me shakehead in court
and fall down.

Challenge Grand Jury indictment

5/9/2018

TRIAL counsel Failed to ask for
motion for change of venue even
though extensive news media
as alleged attacked victim on previous
occasions.

Failed for motion retrial discovery
of since we all discovery
Failed to suppress evidence,
Exhibits, 110, 357 Bullets, Cellphone video
Failed to get all psych exams.

~~The~~ district court abused discretion
improperly denied motion for
extension to file amended petition
to meet with + discuss issues
review, transcript, conduct research
and discovery cautious, and dishonesty
discoption by AMARON STEPHANSON
I told her to file it in Dec 2017
she said she would and did
nothing. no research, no request
for transcripts, no discovery
requests, only extension to
do nothing.

5/9/2018

NEWSPAPERS. Stated I threatened
victim and my mom to kill them
Both. PREJUDICIAL.

NO WARRANT FOR SEARCH OF
CORRALIC and Room padlocked.

NO OBJECTION TO HEARSAY
OF DEFENDANTS WITNESS. HESCUT PARRAZ
AND LUPE CASSILLAS. INCOMPETENT

I am not and was not able
to properly file my petition
for HABEAS RELIEF BECAUSE I
did not have discovery, or
transcript closing + opening argument
PROSECUTORIAL MISCONDUCT. ALSO
IN QUESTIONING WITNESSES.

Not able to factual + bring claims
with all I needed to show
by not allowing 60 day extension
to meet with lawyer.
Have well

Sincerely 69397
ALBERT PARRAZ
P.O. BOX 639
LAS CRUCES, NM
88004

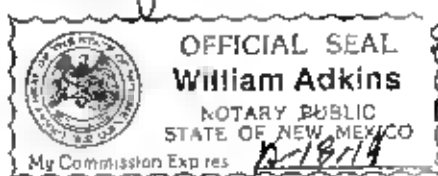
← next page

5/9/18

THIS AFFIDAVIT IS TO SHOW I did NOT have enough time to consult with LIAKE ILEER HABERUS ATTORNEYS. 2/28/2018 I AM going to do my BEST I ASK THE DISTRICT COURT AND FEDERAL COURT to NOT deny my petition or DISMISS it because I did NOT say WHAT WITNESSES would say at an Evidentiary HEARING, OR WHAT EVIDENCE I'd SHOW TO PROVE I'M WRONGFULLY CONVICTED IF I'd OF had a 60 day extension this would OF been possible THERE WILL BE A MISCARriage OF JUSTICE BY NOT allowing me 60 day extension and to give me an Evidentiary HEARING And properly able to present my ISSUES & EVIDENCE documents, WITNESSES And a story and trial transcript.

State of New Mexico
County of Dona Ana

Thank you very much
Albert Ramirez



Signed and sworn before me
on May 10, 2018 by Alberto Ramirez
Notary: William Adkins
My Commission Expires 12-18-19

5/9/18

I was in an accident ^{April} 2007. left me with
to walk with a cane, Hollerbach, dementia,
paranoid, severely depressed, ^{many}
Several medications.

There would be a miscarriage of
Justice to not allow me an 60
day extension to properly talk with
my HOBIANS lawyer and raise issues
in Fed-district court. I need
trial transcript, discovery to research
I'm being done wrong by AMARA STEPHENSON
and the court. I needed more time
I believe wrongly denied.

Thank you very much
Good Bless you

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE: State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.

Because of the late receipt of discovery, I requested a 60 day extension (since Ms. Stephenson requested two separate 90 day extensions but filed nothing, I didn't want to push things and ask for a full 90 days). Unfortunately, the State would not agree to my request. The judge gave us only 30 days, making our new Petition due May 19, 2018.

I have been working furiously to pull the Petition together so we will not miss the deadline. I sent the audio CDs to a transcriptionist to transcribe only those portions of the trial which support the habeas argument. I made reference to the transcripts by citing to the CD and counter number. Once I have the transcripts, I will replace the CD counter number with the actual transcripts as exhibits on receipt of same. Because I am still pulling together the exhibits, I have not labeled them yet. Regardless, I am providing you the Petition, together with the exhibits I do have.

Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you

Sincerely,


LIANE E. KERR

w/Petition

Denial
effective of
assistance of
Habeas Petition
ASSISTANCE

↓

DID NOT
MEET TO
PRESENT MY
ISSUES
PROPERLY

- I.E A OF COUNSEL WAS INSUFFICIENT FOR RECORD NO EXPANSION OF RECORD OR AN EVIDENTIARY HEARING.
 - NO REQUEST BY HABEAS LAWYER FOR TRANSCRIPT OF CLOSING ARGUMENT TRANSCRIBED.
 - TRANSCRIPT WAS ESSENTIAL TO CLOSING ARGUMENT TO REVIEW TRIAL COUNSEL PERFORMANCE AT TRIAL.
 - CONSTITUTIONAL ERROR. WOULD OF BEEN FOUND NOT GUILTY.
 - AMEND RESUBMITTING.
 - FUNDAMENTAL MISCONDUCT OF JUSTICE WOULD RESULT FROM FAILURE TO HOLD A EVIDENTIARY HEARING.
 - DEMONSTRATING A NEED FOR AN EVIDENTIARY HEARING
 - THE COURT MUST HOLD A HEARING FOR THE PRISONER TO OFFER EVIDENCE
- U.S. V. HURTADO ; 516 U.S. 611, 112 S. Ct. 231
- NO APPEARANCE OF PRISONER NEEDED.



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 24, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

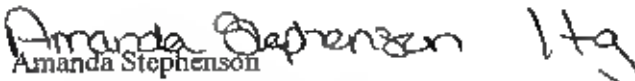
RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case. Also, be advised that we have copied your discovery and will be sending it back to you. It will be in 2 parts.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,


Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

Xc: file

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED

Jan 19 PM 3:00

ALBERTO RAMIREZ,

Petitioner,

vs.

Shelly B. No. D-905-CR-2007-00434

STATE OF NEW MEXICO,

Respondents

SECOND STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED:

Amanda Stephenson
Counsel for Petitioner

Drew Tatum
DISTRICT JUDGE

Approved via email 1/16/18
Andrea Reeb
District Attorney



LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

22-1145
708

DATE. October 5, 2018

TO Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

Enclosed please find the following:

State's Response

Please:

- ☐ File and return endorsed copy to this office
- ☐ Sign and return to this office
- ☐ Check in the amount of \$ _____ for
- ☐ Per your request
- ☒ For your information
- ☐ Please contact the office to schedule an appointment.
- ☐ Pay vendor directly
- ☐ Other:

Sincerely,

Yareli Ocasio
Legal Assistant to
LIANE E. KERR LLC



Law Offices of The Public Defender

Bennett J. Baur
Chief Public Defender

February 23, 2018

Albert Jose Ramirez
DOC #69597
Southern New Mexico Correctional Facility
PO Box 639
Las Cruces, NM 88004

Re: ALBERT RAMIREZ vs State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez:

This office has recently opened a file on your habeas case, and I have determined that your case should be assigned to a contract attorney outside of this Department. If you have any questions about this issue, you may contact me to discuss it at 505-369-3611.

Your new attorney on this habeas matter is: Liane Kerr, PO Box 10491, Albuquerque, NM 87184; phone # (505) 848-9190. Please contact this lawyer regarding further proceedings in the case.

Sincerely,

Brian Tucker
Supervising Attorney/Post-Conviction Habeas Unit

xc: File

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden

Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: **Alberto Ramirez #69597**
5B-F107

FROM: **Bayela Luna**
5B Classification Officer

DATE: **3/9/18**

RE: **Attorney Call**

I have scheduled an attorney phone call for you with Attorney Tucker for Wednesday, April 25, 2018 @ 10:30 am. Please ensure you are in my office 5 minutes prior to the scheduled time.



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 19, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Pro Se Petition for Writ of Habeas Corpus that you submitted to the district court.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,

Amanda Stephenson
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

tg

AS/tg

Enclosure(s)

Xc: file



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 24, 2018

Alberto Ramirez
DOC #69597
Penitentiary of New Mexico
PO Box 1059
Santa Fe, NM 87504

RE: Alberto Ramirez v. State of New Mexico
Cause No. D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the Stipulated Extension Order that was filed in your case. Also, be advised that we have copied your discovery and will be sending it back to you. It will be in 2 parts.

Please call me at (505)369-3612 to schedule an appointment if you have any questions

Sincerely,

Amanda Stephenson 1tg
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

Xc. file



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

January 30, 2018

Alberto Ramirez
DOC #69597
Central New Mexico Correctional Facility
PO Drawer 1328
Los Lunas, NM 87031

RE: Alberto Ramirez v. State of New Mexico
Cause No D-905-CR-2007-00434

Dear Mr. Ramirez,

Enclosed is a copy of the documents our office received from the court. These are all the documents we were able to obtain from your criminal case.

Please call me at (505)369-3612 to schedule an appointment if you have any questions.

Sincerely,

Amanda Stephenson 1tg
Amanda Stephenson
Assistant Public Defender
Post-Conviction Habeas Unit

AS/tg

Enclosure(s)

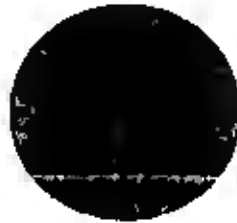
Xc: file

STATE OF NEW MEXICO
Corrections Department
Southern New Mexico Correctional Facility
MEMORANDUM

SUSANA MARTINEZ, Governor

David Jablonski,
Secretary of Corrections

James Mulheron
SNMCF Warden



Post Office Box 639
Las Cruces, NM 88004
Phone: (575) 523-3200
Fax Number: (575) 523-3349

TO: Alberto Ramirez #69597
5B-F107

FROM: Bayola Luna
5B Classification Officer

DATE: 6/19/18

RE: Attorney Call

The below attorney calls have been scheduled for you. Please ensure you are in my office 5 minutes prior to the call.

Attorney Kerr or Yeralie – Thursday, June 21, 2018 @ 12:30 pm

Attorney Tucker – Monday, June 25, 2018 @ 2:00 pm

Forocaster
1800-984-2724



Recd: THIS

Law Offices of The Public Defender

Bennett J. Baur
Chief Public Defender

August 14, 2017

Albert Ramirez
DOC #69597
PNM
PO BOX 1059
SANTA FE, NM 87504

Re ALBERT RAMIREZ vs. State of New Mexico
Criminal Cause No D-905-CR-2007-00434

Dear Mr. Ramirez,

The district court has appointed the Public Defender Department Post-Conviction Habeas Unit to represent you on your petition for a writ of habeas corpus. Your case has been assigned to me, and I am pleased to represent you on your petition.

At your earliest convenience please arrange an attorney-client phone call through your caseworker. Prior to our call, your caseworker should contact my legal assistant, Tanya, to arrange to schedule the attorney-client call. This will insure that I am in my office, have your file ready and am available to take your call. Our office will accept the charges for the call, if necessary.

Because of the number of inmates that I represent, we cannot make a written response to most letters. You can always write to me if there is an emergency or you do not have access to a scheduled attorney-client call through your caseworker. However, if you have any important facts or legal ideas you want me to review, please either bring them up during our phone call or put them in writing.

My direct number is (505)369-3612, and my legal assistant, Tanya's direct number is (505)369-3613. Please keep me posted about your location and please send me any changes of your address.

Sincerely,

Amanda Stephenson

NM Public Defender Department/Post-Conviction Habeas Unit

xc. File

505 Marquette Avenue NW, Suite 120, Albuquerque, NM 87102 (505) 369-3600, FAX (505) 796-4595

PLEASE
RETURN TO
THIS
ALBERT
RAMIREZ
89597
THANK
YOU
JENNIFER
BEAL
CRS 50022

FOR I AMER TO KNOW ENY N

AMANDA I APPRECIATE
YOUR HELP THANK YOU.

SENT IN A AMENDED
PETITION TO THE COURT
PLEASE CONTACT
THE DISTRICT TELL THEM
YOU WILL HELP ME
DO AMEND PETITION

~~I HAVE BEEN CHEATED ALL AROUND
DONE WRONG, I SHOULD BE OUT
DOUBLE JEOPARDY - ALSO, HOW CAN I
WIN MY HABEAS, BUT FILE FOR
DOUBLE JEOPARDY?
IT BEEN PREJUDICED BY COUNSEL I
WANTED COSBY. BUT IN HABEAS
SAID NO BECAUSE I DON'T KNOW
HOW TO WIN ON OTHER ISSUES I WILL
ABANDON THE EFFECTIVE ASSISTANCE IF ABLE
TO WIN ON OTHER ISSUES, FILE DOUBLE
JEOPARDY MOTION DO YOU?
KNOW WHAT I MEAN?
VIOLATION OF MY due
PROCESS, THEN double
JEOPARDY
K.~~

1851 RONS SHECHES
SEE MY PREVIOUS RECORDS
IT WAS FOR THE VIOLATION OF

SEE CASE 100- MICHAEL BRADLEY US. DISTRICT COURT ST. CONNECTICUT
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LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

TRANSMITTAL MEMORANDUM

DATE: October 5, 2018

TO: Albert Ramirez, PNM 69597
c/o PNM
P.O. Box 1059
Santa Fe, New Mexico 87504-1059

RE: State of New Mexico v. Albert Ramirez D-0905-CR-2007-00434

2-1-19
7-1-19

Enclosed please find the following

State's Response

Please

- ☐ File and return endorsed copy to this office
- ☐ Sign and return to this office.
- ☐ Check in the amount of \$_____ for
- ☐ Per your request
- ☒ For your information
- ☐ Please contact the office to schedule an appointment
- ☐ Pay vendor directly
- ☐ Other:

Sincerely,


Yareli Ojeda
Legal Assistant to
LIANE E. KERR LLC

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE NINTH JUDICIAL DISTRICT COURT

FILED
COUNTY CLERK
JAN 12 2009

2009 JAN 12 PM 3:23

STATE OF NEW MEXICO,

Plaintiff,

COURT

ALBERT JOSE RAMIREZ,
DOB [REDACTED] 88
SOC [REDACTED] 793
STN: 050100070340

No. D-0905-CR-0200700434

Defendant.

ADDITIONAL WITNESS LIST

The prosecution notifies the opposing party that the following potential witnesses may be called to testify at trial:

1. Officer Jonathan Howard, Clovis Police Department, Clovis, New Mexico;
2. Officer Tim Orum, Clovis Police Department, Clovis, New Mexico

Fred Van Soder for

ANDREA R. REEB
CHIEF DEPUTY DISTRICT ATTORNEY

I hereby certify that a copy of the
foregoing instrument was mailed/
delivered to opposing counsel on the
12th day of January, 2009

[Signature]

DA No 07-471
MEC/jrg

Criminal Form 9-417

RP 251

STATE OF NEW MEXICO
IN THE NINTH JUDICIAL DISTRICT
COUNTY OF CURRY

2009 JAN 13 PM 2:15

STATE OF NEW MEXICO,

Plaintiff,

v

ALBERT RAMIREZ,

No. D-0905-CR-0200700434

Defendant.

ADDITIONAL
STATE'S WITNESS LIST

COMES NOW the State of New Mexico by and through its attorney, and discloses that the following is an additional witness which the Office of the District Attorney intends to call for trial in this cause

1 Joshua Parkin, Clovis Police Department, 300 Connelly, Clovis, NM 88101.



Matthew Chandler
District Attorney

I hereby certify that I have mailed/
delivered a copy of the foregoing to
opposing counsel this 13th day of
January, 2009.



DA 07-471
MEC/jrg

RP 252

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

May 14, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P O Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez,

Having met with you recently, I can confirm what others have iterated about your ability to work meaningfully on your case. I do not appreciate you assuming that my meeting with you was to rehash arguments which have already been advanced by others and which I did address in the habeas petition. In addition, I asked you numerous times to please provide me with your input on this petition and yet you were silent, preferring instead to accuse others of stealing your discovery and trying to undermine you. I might mention that when we met, you had in your possession, copious amounts of discovery----certainly more than I pulled together for your case and I can only assume that you have multiple copies of everything since you have made the same complaint to anyone who dared assume the task of representing you.

Although I do not think that adding issues which are not supported by the record are helpful to the habeas process, as requested I added the requested issues. I will not add your "affidavit" as it is merely argument. As I have repeated to you on multiple occasions, either I write the habeas petition and present it to the court or you do. You are not my co-counsel. I previously provided the petition and am providing the last two pages which changed due to the additional issues for which you requested "just a paragraph". Those paragraphs are added and included with this letter.

I also include the actual exhibits which are attached to the habeas petition.

Sincerely,



LIANE E. KERR

w/added pages to Petition; exhibits

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**ORDER OF APPOINTMENT FOR HABEAS CORPUS PROCEEDINGS UNDER
RULE 5-802 NMRA**

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, and the Court being fully advised of the circumstances;

THE COURT FINDS THAT:

☒ The petitioner is incarcerated.


IT IS THEREFORE ORDERED THAT:

☒ The Law Office of the Public Defender is hereby appointed to represent the Petitioner in the above-entitled cause without payment of the application fee.

☒ Petitioner's counsel shall file an amended petition or file a notice of non-interf to file an amended petition within ninety (90) days of the date of the filing of this order.


DREW D. TATUM
District Judge, Division II

*my doc is
say filed
July 27th 2017
IP I sent
person. Filed by
clerk. Filed by
July 27th 2017*


NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
FILED IN NY OFFICE

2017 JUL 27 PM 2:17


CLERK DISTRICT COURT

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

April 18, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez

Thank you for your recent letter. I agree we need more time prior to filing the Petition. We did finally get your discovery from the PD's office. I finished reviewing your notes last night. We also received a copy of your appellate file, on loan from the court. I was hoping to go through the file in its entirety before visiting with you in Las Cruces. Our Petition was due April 19, 2018.

Because of the late receipt of discovery, I requested a 60 day extension (since Ms. Stephenson requested two separate 90 day extensions but filed nothing, I didn't want to push things and ask for a full 90 days). Unfortunately, the State would not agree to my request. The judge gave us only 30 days, making our new Petition due May 19, 2018.

I have been working furiously to pull the Petition together so we will not miss the deadline. I sent the audio CDs to a transcriptionist to transcribe only those portions of the trial which support the habeas argument. I made reference to the transcripts by citing to the CD and counter number. Once I have the transcripts, I will replace the CD counter number with the actual transcripts as exhibits on receipt of same. Because I am still pulling together the exhibits, I have not labeled them yet. Regardless, I am providing you the Petition, together with the exhibits I do have.

Consequently, you will need to review the Petition, which is included, carefully and expeditiously and give me your thoughts as soon as possible. I have made arrangements to visit with you in Las Cruces on May 10, 2018. I hope to have things finalized prior to our meeting, so please review the document prior to our upcoming meeting.

I look forward to working with you.

Sincerely,


LIANE E. KERR

w/Petition

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2017

File
Supreme Court of New Mexico
8/11/2017 10:57:06 AM
Office of the Clerk
Joey D. Moya

why if
I sent
it
6-22-2017

NO. S-I-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v

GERMAN FRANCO, Warden,

Respondent

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring,

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED

IT IS SO ORDERED



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties or their counsel of record on date filed

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By Madeline Garcia
Chief Deputy Clerk

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER

THIS MATTER having come before the Court on the Petitioner's Habeas Corpus filed March 22, 2017 and Petitioner's Motion filed April 25, 2017 (hereinafter collectively referred to as the "Petition"), and the Court being fully advised by the

This Court notes that the Petition is based on the fact that the Petitioner is challenging his conviction based on the assistance of counsel.

A review of the file shows that the Petitioner was convicted of including Murder in the First Degree in October 1980 by the New Mexico Supreme Court. The New Mexico Supreme Court affirmed this case was subsequently assigned to this Court.

As to Petitioner's argument that there is no evidence properly supported by facts in the Petition. The Court grants relief as a matter of law in this regard.

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

912
eic/

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2017 MAY 31 PM 12:21

[Signature]
CLERK DISTRICT COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 (hereinafter collectively referred to as "Petition") in the above referenced cause number, and the Court being fully advised, enters its sua sponte order and FINDS:

This Court notes that the Petition is scribbled and nearly illegible. It appears that Petitioner is challenging his conviction based upon prosecutorial misconduct and ineffective assistance of counsel.

A review of the file shows that that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction. This case was subsequently assigned to this Court.

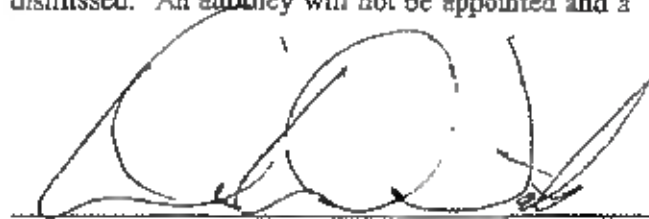
As to Petitioner's argument that there was prosecutorial misconduct, this claim is not properly supported by facts in the Petition. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

2/10

As to Petitioner's argument that he was denied effective assistance of counsel in this matter, this claim is not properly supported by facts in the Petition. Further, this issue was part of Petitioner's appeal and the New Mexico Supreme Court affirmed Petitioner's conviction. This Court finds that Petitioner is not entitled to relief as a matter of law in this regard.

DECISION AND DISMISSAL

After examining the Petition, exhibits, and prior proceedings, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(G)(1) NMRA, the Petitioner's pro se Petition for Writ of Habeas Corpus filed March 22, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed April 25, 2017 are summarily dismissed. An attorney will not be appointed and a hearing will not be set.



HON DREW D. TATUM
District Judge, Division II

January 12, 2017

got note
of
appeal of
attorney

To: Alberto Ramirez #69,597

From: Steven J. Forsberg, Assistant Public Defender

Re: Status of your appeal

Dear Mr. Ramirez,

As we discussed on the telephone, the New Mexico Supreme Court has ruled against you on your appeal. Your direct appeal is now over. You can file a writ of habeas corpus, and I recall you said you had the package of paperwork. I cannot represent you on your habeas case, but when you file your request I advise that you ask that an attorney be appointed for you.

You mentioned that a lot of your papers were lost, so I am sending you copies of the brief-in-chief, state's answer, and reply brief in your case

As I said, I cannot write your habeas petition for you, but I'd suggest you consider adding this to it: In your Brief-in-Chief on page 17 it states that you had asked Doctor Schwartz to be called as a witness on your behalf, but she was not. This is evidence that there were witnesses you wanted called that were not.

You have my name and number if you have any further questions regarding your direct appeal.

Steven J. Forsberg, Assistant Public Defender

505 Marquette Ave. NW ste 120

Albuquerque, NM 87102

Phone: (505)796-4405

LIANE E. KERR, LLC

Liane E. Kerr, Attorney at Law

May 14, 2018

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

RE State of New Mexico v. Albert Ramirez, D-0905-CR-2007-00434

Dear Mr. Ramirez:

Having met with you recently, I can confirm what others have iterated about your ability to work meaningfully on your case. I do not appreciate you assuming that my meeting with you was to rehash arguments which have already been advanced by others and which I did address in the habeas petition. In addition, I asked you numerous times to please provide me with your input on this petition and yet you were silent, preferring instead to accuse others of stealing your discovery and trying to undermine you. I might mention that when we met, you had in your possession, copious amounts of discovery---certainly more than I pulled together for your case and I can only assume that you have multiple copies of everything since you have made the same complaint to anyone who dared assume the task of representing you.

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I also include the actual exhibits which are attached to the habeas petition.

Sincerely,



LIANE E. KERR

w/added pages to Petition, exhibits

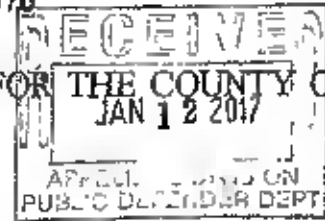
A true copy was served on all parties
or their counsel of record on date
filed.

Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal
docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was
defendant, the district court entered judgment convicting defendant of willful
and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this
Court upon notice of appeal and statement of issues filed by defendant,
whereupon such proceedings were had that on December 1, 2016, a decision was
issued affirming defendant's conviction.

NOW, THEREFORE, this cause is remanded for further proceedings, if
any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

I did not know OF this till
A Dec. 12th 2016

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**
Office of the Clerk
Byron White United States Courthouse
Denver Colorado 80257

Elisabeth A. Shumaker
Clerk of Court

Chris Woipert
Chief Deputy Clerk

May 7, 2019

Alberto Ramirez
No. 69597
Lea County Correctional Facility
6900 West Millen Dr.
Hobbs NM 88244

Dear Mr. Ramirez

The court has received your letter asking for forms from this court. Your case is still pending in the district court. After the district court rules, and if you file an appeal, you will receive instructions and forms from the court at that time.

Very truly yours,



ELISABETH A. SHUMAKER, Clerk

/err

Supreme Court of New Mexico
2/5/2019 9:48 AM
Office of the Clerk

Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
February 05, 2019

NO. S-1-SC-37501

ALBERT RAMIREZ,

Petitioner,

v

JOHN GAY, Warden,

Respondent

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, and Justice Michael E. Vigil concurring,

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of February, 2019

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST

A true copy was served on all parties
or their counsel of record on date filed

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia

Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2017

8/11/2017 10:57:06

Office of the Clerk

Joey D. Moya

NO. S-1-SC-36599

ALBERTO RAMIREZ,

Petitioner,

v.

GERMAN FRANCO, Warden,

Respondent

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring,

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of August, 2017.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST

A true copy was served on all parties
or their counsel of record on date filed

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia

Chief Deputy Clerk

FILED IN AND ATTEST:
A true copy was served on all parties
or their counsel of record on date
filed.

Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

Steven Froberg

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. S-1-SC-34576

TO THE DISTRICT COURT SITTING IN AND FOR THE COUNTY OF
CURRY, GREETINGS:



WHEREAS, in causes numbered D-905-CR-2007-00434 on your criminal docket, wherein State of New Mexico was plaintiff and Albert Jose Ramirez was defendant, the district court entered judgment convicting defendant of willful and deliberate first-degree murder and tampering with evidence; and

WHEREAS, the cause and judgment were afterwards brought into this Court upon notice of appeal and statement of issues filed by defendant, whereupon such proceedings were had that on December 1, 2016, a decision was issued affirming defendant's conviction.


NOW, THEREFORE, this cause is remanded for further proceedings, if any, consistent and in conformity with the judgment of this Court.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 11th day of January, 2017.

(SEAL)

Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

Filed
Supreme Court of New Mexico
2/5/2019 9:48 AM
Office of the Clerk

Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
February 05, 2019

NO. S-1-SC-37501

ALBERT RAMIREZ,

Petitioner,

v

JOHN GAY, Warden,

Respondent

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, and Justice Michael E. Vigil concurring,

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED

IT IS SO ORDERED



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of February, 2019

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST

A true copy was served on all parties
or their counsel of record on date filed

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

By

Madeline Garcia
Chief Deputy Clerk

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
2017 OCT 23 AM 9:53

ALBERTO RAMIREZ,

[Signature]
CLERK DISTRICT COURT

Petitioner,

No. D-905-CR-2007-00434

vs.

STATE OF NEW MEXICO,

Respondents.

STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Interit, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED

[Signature]
Amanda Stephenson
Counsel for Petitioner

[Signature]
Drew Tatum
DISTRICT JUDGE

Approved via email 10/17/17
Andrea Reeb
District Attorney

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
FILED

JAN 19 PM 3:00

ALBERTO RAMIREZ,

Petitioner,

vs.

No. D-905-CR-2007-00434

STATE OF NEW MEXICO,

Respondents.

SECOND STIPULATED EXTENSION ORDER

This matter comes before the Court on the request of habeas counsel for Petitioner, Amanda Stephenson, Assistant Public Defender, for an extension of time for the filing of an amended Petition for Writ of Habeas Corpus or Notice of Non-Intent, and the Court being advised that further investigation and collection of materials is required, counsel for the State having no objection,

It is therefore ORDERED that counsel for Petitioner is allowed an additional 90 days from the filing of this Order for the preparation of an Amended Petition.

APPROVED:

Amanda Stephenson
Counsel for Petitioner

Drew Tatum
DISTRICT JUDGE

Approved via email 1/16/18
Andrea Reeb
District Attorney

Amended
petition
by. Lione. Eke

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STATE OF NEW MEXICO
CURRY COUNTY
NINTH JUDICIAL DISTRICT COURT

ALBERT RAMIREZ,
Petitioner,

v.

D-0905-CR-2007-00434

JAMES MULHERON, warden

Respondent.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Albert Ramirez, through his counsel Liane E. Kerr, and pursuant to NMRA Rule 5-802 and Article II, Sections 7, 12, 14, 15 and 18 of the New Mexico Constitution and the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and respectfully submits this Amended Petition for Writ of Habeas Corpus.

Mr. Ramirez respectfully requests that this Honorable Court issue a Writ of Habeas Corpus and vacate, set aside or correct Mr. Ramirez's sentence and order of confinement in D-905-CR-2007-0434. Mr. Ramirez contends that he was denied his state and federal constitutional right to due process and a fair trial because the cumulative effects prevented him from proving his innocence. The following amendments have been made to the pro se petitions filed on March 22, 2017; April 25, 2017, June 20, 2017 and July 17, 2017.

1. **Place of Confinement:** Mr. Ramirez is detained by Warden James Mulheron at the Southern New Mexico Correctional Facility in Dona Ana, NM.

2. **Nature of Proceedings Resulting in Confinement:** Petitioner was found guilty following a change of plea on the date of his jury trial on January 26, 2009 of two counts of tampering

with evidence and first degree murder in the first degree. Petitioner moved to withdraw his plea and the court denied it; however, the Supreme Court remanded the matter, allowing Petitioner to withdraw his plea. Jury trial was ultimately held on October 10, 2013 and lasted four (4) days, after which Petitioner was found guilty of the murder and tampering charges.

3. Judgment and Sentence Resulting in Current Confinement. Petitioner was sentenced in the Ninth Judicial District Court, Honorable Teddy L. Hartley presiding, on January 8, 2014 to a consecutive sentence on each of the counts: a period of Life on the murder count plus six (6) years for each of the tampering counts in the New Mexico Department of Corrections.

4. Direct Appeal. On February 7, 2014, Petitioner appealed his original conviction to the Supreme Court of New Mexico in *State v. Ramirez*, S. Ct. No. 34,576 and a mandate affirming the trial court was issued on January 18, 2017.

5. Prior Petitions. Petitioner filed a Petition for Writ of Habeas Corpus on March 22, 2017; April 25, 2017, June 20, 2017 and July 17, 2017.

6. Habeas Representation/Timeliness of Petition: By Order of the Court, the Public Defender, Amanda Stephenson, entered an appearance on August 27, 2017. Ms. Stephenson filed two requests for extension, one on October 23, 2017 and again on January 19, 2018, making the Petition due on or before April 19, 2018. Due to a conflict, the Public Defender's Office recently reassigned the Petitioner's case to Liane E. Kerr, who requested a sixty day extension in order to fully review the case, meet with her client and file the brief. The request was opposed by the State. Consequently, this Petition is filed without fully meeting with Mr. Ramirez.

7. **Relief Requested:** This petition seeks to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.

ISSUES PRESENTED IN THIS PETITION:

- a. Whether Petitioner was denied his sixth amendment right to effective assistance of counsel and compulsory process when his attorney refused to call Dr. Maxann Schwartz to testify at either the competency hearing or at trial?
- b. Whether Petitioner's criminal convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced absent a balancing analysis under Rule 11-404b?
- c. Whether Petitioner was denied his right to due process when jurors observed him shackled during trial?

STATEMENT OF FACTS/PROCEDURAL HISTORY

A. Procedural History.

Petitioner was indicted on July 20, 2007 and charged with first degree murder and two counts of tampering with evidence [Exhibit A]. On January 26, 2009, the first day of his jury trial, Mr Ramirez pled guilty to two counts of tampering with evidence and first degree murder in the first degree, with tampering counts running concurrent to the life sentence.

Mr Ramirez moved to withdraw his plea on February 25, 2009, a motion the trial court heard on June 25, 2009, but denied on July 29, 2009. Following an appeal of the denial to withdraw plea, the New Mexico Supreme Court reversed the denial on July 6, 2011 and remanded for a trial on the merits which was ultimately held on October 7-11, 2013 where jurors were instructed to find first degree murder and Petitioner was found guilty of first degree murder. [Exhibit B]. Although Petitioner's plea exposed him to a life sentence only, following trial, Petitioner was sentenced to the

life sentence and each tampering count consecutively, earning him an additional six years for a term of life plus six years [Exhibit C].

1) Facts Regarding Introduction of Prior Bad Acts Evidence

During trial, the State introduced three incidents of bad acts evidence, which Mr. Ramirez maintains was error. Over objection, the State introduced evidence that Mr. Ramirez broke his mother's windshield [Exhibit D: Transcript, 10/8/13, 4:03:49-4:08:21]. Again over objection, the State introduced evidence that the victim's home had been burglarized with the implication that it was Mr. Ramirez who made the entry. [Exhibit E: Transcript, 10/8/13, 4:14:04; 10/11/13, 8:5526-8:59:31]. A final bad acts reference was introduced when the State called a firearms dealer, who testified that Mr. Ramirez sought to purchase a firearm from him. [Exhibit F: Transcript, 10/8/13, 4:15:55-4:25:21].

2) Facts in Support of Prejudice from Shackles Observation

During a break, as jurors were leaving the courtroom, Mr. Ramirez tripped as a result of wearing shackles. He maintained that jurors observed him fall and saw his shackles as a result. [Exhibit G: Transcript, 10/7/13, 3:10:07-3:11:12].

3) Facts Regarding Petitioner's Competency

A notice to determine competency was filed on January 14, 2008 [Exhibit H] and the defendant was evaluated by Dr. Maxann Schwartz and determined incompetent. [Exhibit I]¹. On January 17, 2008, the Defendant was committed to the New Mexico Behavioral Health Institute at

¹ Although confidential, Mr. Ramirez disclosed Dr. Schwartz' report and provided a copy attached to his pro se Petition for Habeas relief and therefore, any concerns about confidentiality are waived.

Las Vegas (NMBHI) for a period of three months [Exhibit J]. A hearing was held on September 15, 2008, where Dr. Burness from NMBHI testified that she believed the Petitioner was malingering. [Exhibit K, L] By Order of the Court, Petitioner was deemed competent to stand trial on September 16, 2008 [Exhibit M]. The record does not reflect that Dr. Shwartz was called to rebut the testimony of Dr. Joanne Burness at the final hearing regarding competency. The State then identified Dr. Burness on its witness list and the Defense filed a Motion in Limine to address statements made to Dr. Burness. [Exhibit N].

Following the remand by the Supreme Court on the plea withdrawal issue, another Motion for Mental Evaluation was filed on September 22, 2011 [Exhibit O], an Order was entered and Petitioner was again sent to NMBHI for an evaluation [Exhibit P]. In the interim, further forensic evaluation at NMBHI was ordered by the Court [Exhibit Q]. Subsequently, Mr. Ramirez was deemed competent to stand trial on March 1, 2013 [Exhibit R].

During trial, the issue of Mr. Ramirez' competency arose repeatedly. During voir dire, the defense attorney informed jurors that there were matters concerning Mr. Ramirez' mental health [Exhibit S, Transcript: 10/7/13, 12:05]. The Court noted that Mr. Ramirez made various statements which resulted in different transport officers being assigned during the trial. [Exhibit T, Transcript: 10/8/13, CD B 8:42:10-8:43:50]. Mid-trial, Mr. Ramirez issued a rambling statement about his health and said that he heard voices and was concerned his attorney was mad at him. [Exhibit U, Transcript: 10/9/13, CD B 10:13:29-10:26:30; 10:24:04-10:25:58]. Also mid-trial, the Defense reminded the Court of competency issues and alerted the Court that Mr. Ramirez did not understand the proceedings and was incapable of assisting in his defense. [Exhibit V, Transcript: 10/9/13, CD B 10:16:00-10:17:00; 10:25:58; 10/10/13, 3:24:59-35:25:49]. In response, the Court; however,

opined that Mr. Ramirez was malingering but noted he had never seen a defendant act the way Mr. Ramirez was acting. [Exhibit W, Transcript: 10/9/13, 10:18:36-10:24:04; 10/10/13, CD B 3:45:47-3:46:20] The Defense again asked for a review of competency [Exhibit X, Transcript: 10/7/13, 10:13:29-10:14:51; 10/9/13 1:35:36-1:44:46]. Mr. Ramirez specifically asked that the jury be told about his medical problems and specifically told the Court that he did not believe the trial to be fair, as the right questions were not being asked and Dr. Schwartz' testimony was necessary to him having a fair trial. [Exhibit Y, Transcript: 10/9/13, CD B 2:36:02-3:13:45; 10/10/13 CD B 10:40:41-10:58:56; 4:41:38-4:42:15] Throughout, the Defense alerted the Court that Mr. Ramirez was difficult to represent. [Exhibit Z, Transcript: 10/10/13, CD B 2:06:30-2:41:36]. The Defense, however, informed the Court and the State that it would not be submitting a competency instruction. [Exhibit AA, Transcript: 10/10/13, 4:32:27-4:35:41].

B. Facts of the Case.

Petitioner, eighteen year old Albert Ramirez, sometimes resided with his mother, Debra Ramirez and step-father, Elado Robledo at their home in Clovis, New Mexico. Some of his belongings remained at the residence when he was ordered to leave the home due to a disruption with his step-father. When Albert Ramirez returned to the home to collect some of his belongings on July 12, 2007, he argued with his step-father and shot and killed Elado Robledo. This was witnessed by neighbor Sam Saiz, Jr. and another person who was driving by at the time.

During the investigation, law enforcement located Petitioner's shoe, a pair of shorts and some clothing in a trash dumpster several blocks from the scene. Although no firearm was located, jail calls were intercepted where Petitioner directed his cousin to an area to remove a "ban ban", something Petitioner admitted was a gun that he used in self-defense during the shooting

The State introduced prior bad acts during trial. Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive, that is, that Petitioner had used his crutches to crack his mother's windshield.

During his testimony, the Petitioner claimed self-defense and told jurors that the shoe and shorts were a result of his step-father's assault. He said that his step-father had a gun and he had something in his hands, causing the Petitioner to fear for his safety. During cross-examination, Petitioner refused to respond to the prosecutor's questions, electing instead to chastise his defense counsel.

During a break, the Petitioner tripped over a table due to the shackles on his ankles. He complained of prejudice because jurors were present in the courtroom. The trial court held that jurors could not see the shackles, as a skirt covered the trial table. None of the jurors was questioned regarding the incident and what he/she saw, nor did trial counsel request a mistrial.

ARGUMENT

Petitioner, Albert Ramirez, adequately alleges claims, which entitle him to legal argument and/or an evidentiary hearing on the following grounds: Denial of his sixth amendment right to effective assistance of counsel and denial of his due process right to a representative venire panel.

- I. PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT OF COMPULSORY PROCESS WHEN HIS ATTORNEY FAILED TO CALL DR. MAXANN SHWARTZ TO REBUT THE STATE'S MERE ASSERTIONS OF MALINGERING AND TO TESTIFY AT TRIAL ABOUT THE DEFENDANT'S STATE OF MIND.**

A. It is Ineffective Assistance of Counsel to Ignore a Defendant's Right of Compulsory Process.

The Sixth Amendment's right to counsel guarantee requires that effective assistance of counsel be given at all stages of the proceedings, and New Mexico has affirmed this right U.S. Const. amends VI and XIV; N.M. Const. Art. II § 14; *State v. Robinson*, 99 N.M. 674, 662 P.2d 1341 (1983). Defense counsel's performance is measured against "an objective standard of reasonableness" *Strickland v. Washington*, 466 U.S. 668, 688 (1984), *State v. Orona*, 97 N.M. 232, 638 P.2d 1077 (1982), *State v. Dean*, 105 N.M. 5, 727 P.2d 944 (Ct. App. 1986) (standard is whether defense counsel exercised the skill, judgment, and diligence of a reasonably competent attorney).

As noted by *Strickland v. Washington*, "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction...has two components:

- 1) First, the defendant must show that counsel's performance was deficient..
- 2) Second, the defendant must show that the deficient performance prejudiced the defense " *Id.* at 687.

In order to prevail on an ineffective assistance claim, the defendant must show her counsel's performance fell below the standard of a reasonably competent attorney and, due to the deficient performance, the defense was prejudiced *State v. Talley*, 103 N.M. 33, 34, 702 P.2d 353, 354 (Ct. App. 1985). Prejudice is measured by "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland v. Washington*, 466 U.S. 668, 695, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674 (1984). The test for judging any claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104

S Ct. at 2064 In reviewing an ineffectiveness claim, the entire proceedings must be considered as a whole. *Id.*, *State v Talley*, *State v Lovato*, 110 N.M. 146, 147, 793 P.2d 276, 277 (Ct. App. 1990)

In cases of egregious failure by trial counsel, defendants are relieved of the burden of establishing prejudice due to “circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.” *United States v Cronic*, 466 U.S. 648, 659 (1984) The *Cronic* court described three such circumstances

- (1) denial of counsel altogether;
- (2) defense counsel’s failure “to subject the prosecution’s case to meaningful adversarial testing”; and
- (3) when the accused is “denied the right of effective cross-examination.” *Id.*

This is such a case. Counsel failed to subject the prosecution’s case to meaningful adversarial testing. *State v. Aragon*, 2009-NMCA-102, ¶ 15, 147 N.M. 26, 216 P.3d 276 (prima facie demonstration of ineffective assistance where trial counsel failed to secure an expert necessary to explain the State’s evidence)

B. Trial Counsel Erred in Failing to Call Dr. Maxann Schwartz as a Witness to Rebut the State’s Mere Assertions of Malingering and Denied Mr. Ramirez his Rights to Compulsory Process and Fair Trial when he Refused to Call Dr. Schwartz to Testify Regarding Mr. Ramirez’ Mens Rea.

Mr. Ramirez was evaluated by an accredited psychologist, Dr. Maxann Schwartz, who found him incompetent to stand trial and who did not find malingering. Dr. Schwartz was not called at the final hearing to determine competency to testify about Mr. Ramirez’ present competency and against the state’s assertion of mere malingering. As a result, the Court could only consider the findings of Dr. Burness, from NMBHI, who testified that she believed Mr. Ramirez was pretending not to understand. The Court relied on this testimony to adjudge Mr. Ramirez competent to stand trial.

Although Mr. Ramirez requested that his attorney call Dr. Shwartz as a witness at trial to address his state of mind, his counsel refused to do so. This failure to call Dr. Shwartz to testify as to competency at the time of the event resulted in a denial of Mr. Ramirez' right of compulsory process. Criminal defendants have the right to put before a jury evidence that might influence the determination of guilt.' *Taylor v. Illinois*, 108 S. Ct. 646 (1988) citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)(criminal defendant's conviction reversed and remanded because he was not allowed to examine government documents that may have affected the outcome of the trial)).

The right to present a defense is "as American as apple pie" Defendants are constitutionally entitled to be heard, effectively present evidence central to their defense, call-witnesses to testify on their behalf, and rebut evidence presented by the prosecution. It is well established that the Sixth Amendment guarantees the right of Confrontation. As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to call witnesses to testify on their own behalf and if necessary, to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. *See* N M Const., Art. II, Sec. 14 ("[i]n all criminal prosecutions, the accused shall have the right . . . to have compulsory process to compel the attendance of necessary witnesses in his behalf. . . "); U S Const amend VI ("[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . .") Without this right, Defendant asserts, his broader right to a fair trial, guaranteed by the Fourteenth Amendment to the United States Constitution and by Article II, Section 18 of the New Mexico Constitution, was impeded. *See generally* Peter Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71, 166-70 (1974)

Few rights are more fundamental than that of an accused to present his own defense" *Taylor v. Illinois*, 108 S. Ct. 646 (1988), *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). Our United States Supreme Court has held that the right to present a defense consisted of the right to compel the attendance of witnesses and offer their testimony and that such a right "stands on no lesser footing than other Sixth Amendment rights that we have previously held applicable to the states." *Taylor v. Illinois*, 108 S. Ct. at 652-653 (quoting *Washington v. Texas*, 388 U.S. 14, 18 (1967)). Such a right "is an essential attribute of the adversary system itself." 46 *Id.* (citing *United States v. Nixon*, 418 U.S. 683 (1974)) (President's duty violated his constitutional right "to have compulsory process to compel the attendance of necessary witnesses in his behalf"). See also N.M. Const., Art. II, § 14, see *State v. Cooley*, 19 N.M. 91, 140 P. 1111, 52 L.R.A., N.S., 230 (1914).

Mr. Ramirez was charged with first degree murder—a charge that on its face requires a showing that his actions were willful and deliberate and which requires a showing of premeditation. [Exhibit B]; See *State v. Montoya*, 1963, 72 N.M. 178, 381 P.2d 963, *State v. Ybarra*, 1918, 24 N.M. 413, 174 P. 212 (essential elements of murder in the first degree include the elements of deliberation and premeditation). "An abnormal mental condition may influence the probability that a defendant premeditated and deliberated—and so be taken into account by a jury in determining whether those states of mind existed in fact (beyond a reasonable doubt)—even though it did not eliminate the capacity for premeditation." *United States v. Peterson*, 509 F.2d 408, 416-17 (D.C. Cir. 1974) "[E]xpert testimony is admissible if it merely 'support[s] an inference or conclusion that the defendant did or did not have the requisite mens rea.'" *United States v. Bennett*, 161 F.3d 171, 183 (3rd Cir. 1998) (quoting *United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997)). Dr. Shwartz' testimony was relevant, we note that New Mexico courts have long allowed such expert testimony

relating to a defendant's mental state at the time of the commission of the offense. *See id.*; *see also State v. Elliot*, 96 N.M. 798, 635 P.2d 1001 (Ct. App. 1981), *State v. Smith*, 80 N.M. 126, 452 P.2d 195 (Ct. App. 1969). Regardless, Dr. Shwartz was not called at trial to testify about Mr. Ramirez' present competency and against the state's assertion of mere malingering. *State v. Balderama*, 88 P.3d 845, 135 N.M. 329 (2004).

Counsel's failure to pursue a potentially meritorious defense raises substantial questions of ineffective assistance counsel. *See State v. Luna*, 1979-NMCA-048, ¶27, 92 N.M. 680 (Court addressed issues relating to ineffective assistance of counsel for failure to file pre-trial motions regarding charge of conspiracy when 3 other co-defendants had that particular charge dismissed, leaving no one to conspire with). "The testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies...counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986)(internal citations omitted); *see also Strickland*, 466 U.S. at 687-88.

Reasonable professional performance includes a duty to investigate all reasonable lines of defense. *Fisher v. Gibson*, 282 F.3d 1283, 1291 (10th Cir. 2002), *citing Strickland*, 466 U.S. at 691. The failure to pursue information from a key witness regarding the basis of the accused's most important defense cannot be considered sound trial strategy. *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994). Counsel is ineffective if he fails to conduct an adequate investigation into the defendant's most viable theory of the defense. *Bigelow v. Williams*, 367 F.3d 562 (6th Cir. 2004) (reasonable prudence should lead lawyer to recognize the importance of potential witness testimony).

The failure to pursue an adequate defense may establish grounds for finding ineffective assistance of counsel. *State v. Barnett*, 1998-NMCA-105, ¶ 30, 125 N.M. 739 citing ABA Standards for Criminal Justice Pleas of Guilty, Standard 14-3.2 (2nd edition 1980)

Whether defense counsel's actions were unreasonable or caused prejudice cannot be established by the trial record; *State v. Plouse*, 2003-NMCA-048, ¶ 15, 133 N.M. 495, 64 P.3d 522, rather, a habeas proceeding is the appropriate procedure, so that "the defendant may actually develop the record with respect to defense counsel's actions." *State v. Arrendondo*, 2012-NMSC-013, ¶ 38. New Mexico appellate courts frequently remand claims of ineffective assistance of counsel brought on direct appeal for further evidentiary hearings. *State v. Hunter*, 2006-NMSC-043, ¶30, 140 N.M. 406, 143 P.3d 168 "[H]abeas corpus proceedings are the preferred avenue for adjudicating ineffective assistance of counsel claims, because the record before the trial court may not adequately document the sort of evidence essential to a determination of trial counsel's effectiveness." *Id.* (internal quotation marks and citation omitted). Thus, we have held that an evidentiary hearing in most cases "may be necessary." *Id.* (internal quotation marks and citation omitted).

Defendant's ability to confront his accuser and to obtain compulsory process, protected by the Sixth Amendment to the United States Constitution as well as Article II, Section 14 of the New Mexico Constitution, was compromised. As a result, Mr. Ramirez was denied his right of due process contrary to N.M. Constitution, Art II, Sec. 18, and the U.S. Constitution, Amend. V and 14 and compulsory process as guaranteed by N.M. Const, Art II, Sec. 14 and U.S. Const. Amend VI.

"A defendant is not entitled to an attorney who will 'leave not the smallest stone unturned'

but when the defendant has but one stone, it should at least be nudged " *Coleman v Brown*, 802 F.2d 1227, 1234 (10th Cir 1986)(internal citations omitted). Mr. Ramirez submits that failure to call Dr. Schwartz as a witness, per his request, was tantamount to ignoring a boulder.

II. PRIOR BAD ACTS SHOULD NOT HAVE BEEN INTRODUCED AND THEIR INTRODUCTION DENIED THE PETITIONER HIS RIGHT TO A FAIR TRIAL.

A Defendant is presumed innocent and is entitled to due process and a fair trial. U.S. Const., amend V., XIV; N.M. Const , art II § 18 " *State v Martin*, 1984-NMSC-077, ¶ 17, 101 N.M. 595 (fair trial), U S Const., amends VI and VII, and N M. Const., Art II, sec 14 and 18 (presumption of innocence), and N.M Constitution, Art II, Sec. 18, and the U.S. Constitution, Amend. V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

The evidence was not relevant. It is the state's burden to establish the relevancy of the proffered evidence *State v Herrera*, 92 N.M. 7, 582 P.2d 384 (Ct. App.), *cert denied*, 91 N.M. 751, 580 P.2d 972 (1978) Rule 404(B) is a specialized rule of relevancy which requires counsel to identify the consequential fact to which the proffered evidence of other acts is directed. *State v Aguayo*, 114 N.M. 124, 835 P.2d 840 (Ct. App), *cert denied*, 113 N.M. 744, 832 P.2d 1223 (1992). It is only then, after the proponent has provided the trial court with an adequate basis, that the trial court should decide whether the probative value of the evidence is not substantially outweighed by the prejudicial impact. *State v. Beachum*, 96 N.M. 566, 568-69, 632 P.2d 1204, 1206-07 (Ct App 1981)(emphasis added) Such evidence should not be received when "very probably its sole result, or at least its overwhelming result, will be that of establishing defendant's bad character, or his disposition or propensity to commit crime, as the basis for an inference that he committed the crime

with which he is charged and for which he is being tried." *State v. Mason*, 79 N.M. 663, 667, 448 P.2d 175, 179 (Ct. App.), *cert denied*, 79 N.M. 688, 448 P.2d 489 (1968)

As noted by the Court of Appeals in *State v. Andrade*, 1998-NMCA-031, ¶12

[o]ur rules of evidence, following longstanding legal tradition, insist that a defendant not be convicted by a jury simply on evidence that the defendant is a bad person." *citing* Rule 11-404 NMRA ... [e]vidence of a defendant's prior misconduct ordinarily is not admissible to support the inference that the defendant has a propensity to commit unlawful acts and therefore is likely to have committed the charged act. New Mexico has been particularly strict in limiting evidence of prior crimes " *citing* *State v. Wright*, 1996-NMCA-077.

Although evidence of other bad acts may be relevant, the risk that the jury will convict because Defendant is a bad person and needs to be punished creates a prejudicial effect. Rule 11-404 (b) provides that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith or to show criminal propensity. *See State v. Roybal*, 115 N.M. 27, 846 P.2d 333 (Ct. App. 1992) ("Generally, proof of other crimes has a tendency to prejudice the minds of the trier of facts and predispose them to a belief in the accused's guilt.").

Over objection, the State called a firearms dealer to testify that the defendant had tried to purchase a gun from him in the past to support premeditation. Also over objection, the State introduced evidence that someone had broken a front window at the victim's house and this was allegedly done by the Petitioner to show motive. Yet another incident was introduced to show intent and motive; that is, that Petitioner had used his crutches to crack his mother's windshield. The State presumably sought protection under Rule 11-404 (b) as indicated below

The broken front window was never proven to be the Defendant. Incredibly, the State sought introduction of this act to show motive. The evidence was not relevant to defendant's motive to

commit the instant offense, as the State could not prove that it was the Defendant who broke the window and not just a random act. *See e.g. State v Ruiz*, 119 N.M. 515, 892 P.2d 962 (Ct. App. 1995); *State v. Williams*, 117 N M 551, 874 P 2d 12 (1994)(prior relationship with victim or merely enjoying sex is not sufficient to suggest that a defendant had cause to force himself on the victim). Admission of prior acts must be shown to sufficiently be similar to the charged acts to indicate they were likely done by the same person. In order for evidence to be admissible under this exception, the similarity must rise above the level of characteristics common to many incidents of the crime and must indicate a distinct pattern of conduct. The incident was not so distinctive as to constitute a "unique or distinct pattern easily attributable to one person." *State v Beachum*, 96 N M 566, 568, 632 P.2d 1204, 1206 (Ct App 1981).

The firearms expert could not recall what kind of weapon Mr. Ramirez allegedly sought to purchase; he could not recall when exactly Mr. Ramirez came to his business; he did not keep a copy of the firearms application form which he claims he received from Mr. Ramirez. Although trial counsel sought to exclude the evidence, the trial court allowed the State to introduce it to support motive and premeditation. This was in violation of Rule 11-404(B) which provides that evidence of a defendant's prior acts is admissible to show proof of motive. Factually similar incidents cannot, alone, prove plan, particularly when the acts are several years apart and the State must be able to prove the act was somehow part of a bigger plan. *State v Montoya*, 116 N M 72, 860 P.2d 202 (Ct. App. 1993)

Finally, whether Mr. Ramirez did or did not break his mother's windshield, the evidence was neither relevant nor probative to prove that Mr. Ramirez intended harm to his step-father. The evidence was admitted in violation of Rule 11-404(A) NMRA 2004 (providing that "[e]vidence of

a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion") *See State v. Lucero*, 114 N.M. 489, 492, 840 P.2d 1255, 1258 (Ct. App. 1992); *see also State v. Alberts*, 80 N.M. 472, 474, 457 P.2d 991, 993 (Ct. App. 1969) (finding that if the sole purpose of evidence is to demonstrate bad character, reputation, or disposition, its prejudicial effect makes it inadmissible).

On the whole, the probative value of the evidence did not outweigh the prejudicial effect for which the State introduced it. As noted in *State v. Williams supra*, "[i]f evidence of prior acts is relevant and admissible for a purpose other than proving a defendant's propensity to commit a crime, the probative value of the evidence must outweigh its prejudicial effect". *Id. citing State v. Landers*, 115 N.M. 514, 517, 853 P.3d 1270, 1273 (1993); NMRA 1999, 11-403, *State v. Beachum*, 96 N.M. 566, 567-68, 632 P.2d 1204, 1205-06 (Ct. App. 1981)

Even when admitting prior bad acts evidence under a recognized exception, the trial court must still meet the requisites of 11-403. *State v. Wrighter*, 122 N.M. 200, 922 P.2d 582 (Ct. App. 1996) The trial court may admit evidence under NMRA 1999, Rule 11-404(B) if the probative value of the evidence outweighs any prejudicial effect. *State v. Landers*, 115 N.M. at 518, 853 P.3d at 1274

There is no indication that the Court balanced the prejudicial effect of the evidence against its probative value to determine if "the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. *See* Rule 11-403, NMRA 2001. Even allowing that evidence of the defendant's prior history was admissible to establish context, *See Jones*, the trial court must engage in a balancing requirement of NMRA 1999, 11-403

State v Rojo, 1999-NMSC-001, ¶ 47, 126 N.M. 438, 971 P.2d 829 ("Under Rule 11-403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice "

Proof of other crimes has a tendency to prejudice the minds of the triers of fact and to predispose them to a belief in the accused's guilt. *See State v Rowell*, 77 N.M. 124, 419 P.2d 966 (1966); *State v Allen*, 91 N.M. 759, 581 P.2d 22 (Ct App. 1978).

The real danger of admitting past conduct is that, if the jury believed the testimony, the jury would conclude that the Defendant acted in conformance therewith, and if he did so then, it is more likely he did so now. One cannot ignore the long tradition of courts and commentators expressing fear that jurors are too likely to give undue weight to evidence of a defendant's prior misconduct and perhaps even to convict the defendant solely because of a belief that the defendant is a bad person.

State v Lamure, 115 N.M. 61, 71, 846 P.2d 1070, 1080 (Ct App 1992), *cert. denied*, 114 N.M. 720, 845 P.2d 814 (1993). Rule 404(B) is designed to prevent this kind of perception. *Id.* Testimony which amounts to evidence of a defendant's bad character, or disposition to commit the crime charged, when not offered for a legitimate purpose, is inadmissible and unfairly prejudicial. *State v Rael*, 117 N.M. 539, 540, 873 P.2d 284, 286 (Ct. App. 1994).

Defendant submits that it was prejudicial error to admit evidence of prior uncharged conduct, *State v Ross*, 88 N.M. 1, 536 P.2d 265 (Ct App 1975). Any references to other offenses may be probative, but its probative value is substantially outweighed by the prejudice to the Defendant. *State v Hogervorst*, 90 N.M. 580, 566 P.2d 828 (Ct App 1977). Accordingly, Defendant's rights to fair trial and due process were violated. U.S. Const., amend V, XIV; N.M. Const., art. II § 18 (fair trial) and N.M. Constitution, Art. II, Sec. 18; and the U.S. Constitution, Amend V and 14 (due process). Mr. Ramirez maintains that he was denied these rights when, over the Defense objections, the State introduced prior bad acts during trial.

III. THE PETITIONER WAS LIKELY PREJUDICED AND DENIED HIS RIGHT TO A FAIR TRIAL WHEN HIS FALL WAS A DIRECT RESULT OF BEING SHACKLED AND HIS ATTORNEY DID NOT SEEK TO HAVE JURORS POLLED REGARDING WHETHER THEY SAW THE SHACKLES OR NOT.

A person in custody "coming into court for trial is entitled to make his appearance free of shackles or bonds." *State v Holly*, 2009-NMSC-004, ¶ 41, 145 N.M. 513, 201 P.3d 844 (internal quotation marks and citation omitted); *see also* Rule 5-115(C) NMRA ("Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains or stun belts, a visible bullet proof vest or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury.") The record does not reflect that any order was issued by the trial court, until after the fall, whereby the shackles were removed for the remainder of the trial.

Petitioner recognizes that "a defendant's right to appear free of visible restraints is not absolute", *State v Johnson*, 2010-NMSC-016, ¶ 26, 148 N.M. 50, 229 P.3d 523, as "it must be balanced against the state's interest in maintaining security." *State v Gomez*, 1971-NMCA-009, ¶¶ 2-7, 82 N.M. 333, 481 P.2d 412 (upholding the district court's denial of mistrial where jurors had viewed the defendant in handcuffs only as safety requirements demanded, "prior to the beginning of trial and during recess"). In this case, however, there were other adequate remedies to ensure the safety of the community and the integrity of security.

While a juror's "inadvertent or insignificant exposure to a defendant in shackles is not sufficiently prejudicial to merit a new trial," *See Holly*, 2009-NMSC-004, ¶ 41, in this case, there may have been 12 jurors who observed Mr. Ramirez in shackles. In *Holly*, a single juror may have seen the defendant in handcuffs during his escort back to detention. *Id.* ¶ 40. Rather than calling

attention to the incident by questioning the jurors, the district court chose to remedy the situation by repeating the general jury instructions to the jurors. *Id.* On appeal, our appellate court concluded that the incident did not constitute fundamental error because "it [was] unclear whether any exposure actually occurred, or if it did, that it was anything more than inadvertent or insignificant exposure." *Id.* ¶ 42. Here, there is nothing indicating that the Defense sought to question jurors regarding what they did/did not see when the defendant fell, rather, an assertion was made and the parties determined that likely none of the jurors saw anything. Another difference is that the defendant in *Holly* was wearing handcuffs. Shackles are arguably more egregious.

Given the uncertainty, the Defense should have demanded the jurors each be questioned individually and should have moved for a mistrial. In *State v. Mills*, 1980-NMCA-005, ¶ 15, 94 N.M. 17, 606 P.2d 1111, at least one juror viewed the defendant in handcuffs while a bailiff was escorting the defendant from the courtroom during a noon recess. The defendant moved for a mistrial, arguing that the incident deprived him of a fair trial. *Id.* The bailiff explained to the district court that he had waited with the defendant "for the time normally required for the departure of jurors," and "that the view occurred because some jurors had used the restroom before departing." *Id.* ¶ 16. The district court held that the juror's observation of defendant in handcuffs was inadvertent and denied the defendant's motion for a mistrial, reasoning that "any impropriety resulting from the view was harmless" because the evidence at trial showed that the defendant was incarcerated. *Id.* ¶¶ 16-17. This case differs in three respects: the observation may have been made by all of the jurors; the defendant in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985)(counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962), see also *Duncan v. Kerry*, 1993-NMSC-011, ¶ 3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶ 6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



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VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

I, the undersigned, being first duly sworn upon my oath, state that I am the Petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained therein are true and correct to the best of my knowledge, information, and belief

Albert Ramirez, PNM 69597
c/o SNMCF
P.O. Box 639
1983 Joe R. Silva Boulevard
Las Cruces, New Mexico 88004-0639

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2018,
by _____.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the Respondent and the district attorney in the county in which the petition is filed by _____ (described manner of service), this 19th day of May, 2018

LIANE E KERR, Esq.

in *Mills* was cuffed as opposed to shackled; and the evidence at trial did not show that the defendant was incarcerated.

Pursuant to *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985) (counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit), the Petitioner urges the Court to consider the issue of whether the possibility of seeing him shackled resulted in prejudice to his case.

IV. MR. RAMIREZ ADDITIONALLY REQUESTS THE COURT CONSIDER ADDITIONAL ISSUES WHICH WERE INHERENT IN HIS TRIAL, BUT WHICH WERE NOT RAISED BY HIS APPELLATE ATTORNEY.

Undersigned provided Mr. Ramirez with a copy of the Petition and asked that he contact her with any suggestions/changes. No contact was made; however, in meeting with Mr. Ramirez, he made requests for additional arguments and they are therefore addressed briefly. See *State v. Franklin*, 78 N.M. 127, 428 P.2d 982 (1967) and *State v. Boyer*, 103 N.M. 655, 712 P.2d 1 (Ct. App. 1985). (counsel should set forth contentions urged by a petitioner whether or not counsel feels they have merit). Mr. Ramirez asks this Court to consider the following in the context of the entire trial:

I. Sufficiency of the Evidence. If the State does present evidence sufficient to support a finding of guilt beyond a reasonable doubt, the verdict violates the Due Process Clause. See *Jackson v. Virginia*, 443 U.S. 307, 317-18 (1979). Proof beyond a reasonable doubt is equivalent to proof "to a moral certainty," and refers to the highest degree of confidence with which an historical or physical fact can be known. *Victor v. Nebraska*, 511 U.S. 1, 11-12 (1994). See also *State v. Silva*, 2008-NMSC-051, ¶¶ 19-20, 144 N.M. 815, 192 P.3d 1192 (prosecution failed to present "any evidence, circumstantial or otherwise, of an overt act" by the defendant from which the jury could infer an intent to defendant), and *State v. Duran*, 2006-NMSC-035, ¶¶ 15-16, 140 N.M. 94, 140 P.3d

515.. 2008-NMSC-051, ¶ 19 (no evidence of any act by the defendant to destroy or hide evidence, with the only support for the tampering charge stemming from the fact that the evidence was not found).

2. **Prosecutorial Misconduct.** Without objection from trial counsel, the prosecutor claimed that Mr. Ramirez was a “menace to society”, a liar and during his closing argument. Prosecutorial misconduct reaches the level of fundamental error when it is egregious and so pervasive and prejudicial that the defendant was deprived of a fair trial and applies only when a defendant's conviction would shock the conscience if allowed to stand, or when an error is such that the fundamental integrity of the judicial process is implicated. *State v. Sosa*, 2009-NMSC-056, ¶ 35, 147 N.M. 351, 223 P.3d 348. Mr. Ramirez maintains that his conviction, when viewed against the prosecutor's comments and conduct, would shock the conscience if allowed to stand.

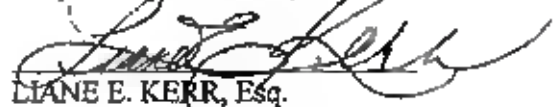
3. **Double jeopardy.** Mr. Ramirez believes that being twice charged with evidence tampering was tantamount to double jeopardy. No person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Imposing multiple punishments for tampering charges directed at the same item of evidence, violates the right to be free from double jeopardy. *State v. DeGraff*, 2006-NMSC-011, ¶ 34, 139 N.M. 211, 131 P.3d 61. However, Undersigned recognizes that distinct acts, separated by time and space, do not violate double jeopardy. *See State v. Quick*, 2009-NMSC-015, ¶ 25 (stating that “[d]istinctness may be established by determining whether the acts constituting the two offenses [were] . . . separated by time or space”).

CONCLUSION

If a petition for writ of habeas corpus demonstrates on its face that a Petitioner may have been deprived of his constitutional rights, the court must address the issue in an evidentiary hearing unless

it plainly appears that the petitioner is not entitled to any relief as a matter of law, based on the facts alleged in the petition, or the uncontroverted facts shown by the court record. *State v. Franklin*, 1967-NMSC-151, ¶6, 78 N.M. 127 quoting *Machibroda v. United States*, 368 U.S. 487 (1962); see also *Duncan v. Kerry*, 1993-NMSC-011, ¶3, 115 N.M. 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel). Habeas corpus proceedings are the preferred method for adjudicating claims of ineffective assistance of counsel, because such claims often cannot be considered based solely on the record before the trial court. *Duncan*, 1993-NMSC-011, ¶4. Consequently, when a petition for a writ of habeas corpus alleges particular facts which set out a claim of inadequate representation, the petitioner is entitled to a hearing. *State v. Moser*, 1967-NMSC-163, ¶6, 78 N.M. 212 (overruled on other grounds).

Respectfully submitted,



LIANE E. KERR, Esq.

PO Box 10491

Albuquerque, NM 87184-0491

(505) 848-9190

Case 2:19-cv-00202-MV-CG Document 3 Filed 03/11/2019 Page 26 of 189

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN

JUN 20 2017

West's New Mexico Statutes Annotated

State Court Rules

9. Criminal Forms

Article 7. Special Proceedings

Clerk District Court

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

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[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF

CURRY

IN THE DISTRICT COURT

For Official Use Only

No. _____

(To be supplied by the clerk of the court)

ALBERT RAMIREZ

(Full name of prisoner)

Petitioner,

v.

WARDEN GERMAN FRANK

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2018 DEC 14 AM 10:57

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

Shelly Dwyer
CLERK DISTRICT COURT

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come before the Court on Petitioner's pro se Petition for Writ of Habeas Corpus filed June 20, 2017 and Petitioner's pro se Petition for Writ of Habeas Corpus filed July 17, 2017 in the above referenced cause number, the Court having appointed the Law Office of the Public Defender to represent the Petitioner, Petitioner's Amended Petition for Writ of Habeas Corpus having been filed through Counsel on May 18, 2018, and the Court limiting its analysis to said Amended Petition, the State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, a Preliminary Disposition Hearing was held on October 29, 2018. Petitioner appeared telephonically with Petitioner's Counsel, Liane E. Kerr, Attorney at Law, the State appeared by and through Brian S. Stover, Chief Deputy District Attorney, this Court having heard argument and taking its decision under advisement, having reviewed the pleadings, researched the issues and the Court being fully advised and after due deliberation, FINDS;

1. Petitioner is represented by Liane E. Kerr, Attorney at Law. Through Counsel, Petitioner filed an Amended Petition for Writ of Habeas Corpus on May 18, 2018.

- 2 This Court notes that the New Mexico Supreme Court found that, at least to a portion of the issues raised by Petitioner, that Petitioner retained the ability to bring such a claim via a habeas corpus proceeding. *State v. Ramirez*, 2016 WL 7029226, ¶ 32.
- 3 This Court entered its Notice that the Court is Not Dismissing Any Portion of the Amended Petition at this Time and Order for State to Respond to Amended Petition for Writ of Habeas Corpus on June 15, 2018.
- 4 Per Rule 5-802(H)(3) NMRA, the Ninth Judicial District Attorney's Office was ordered to file a response to Petitioner's Amended Petition for Writ of Habeas Corpus within one-hundred and twenty (120) days from the date the Amended Petition for Writ of Habeas Corpus was filed (May 18, 2018).
- 5 The State's Response to Defendant's Amended Petition for Writ of Habeas Corpus was timely filed on September 10, 2018.
- 6 This matter was set for a Preliminary Disposition Hearing on October 29, 2018. This Court heard argument from both parties.
- 7 Following the Preliminary Disposition Hearing, this "court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall dispose of the petition without an evidentiary hearing, but may ask for briefs and/or oral arguments on legal issues." Rule 5-802(H)(4) NMRA. This Court does hereby rule that this matter is ripe for a decision. This Court finds that an evidentiary hearing is not required and no further briefs/argument are required.
- 8 A review of the file shows that Petitioner was convicted of various offenses including Murder in the First Degree in October, 2013. The Honorable Judge Teddy Hartley presided over the trial in this matter.

9. Petitioner appealed his conviction to the New Mexico Supreme Court. The New Mexico Supreme Court affirmed Petitioner's conviction in its decision, *State v. Ramirez*, 2016 WL 7029226. Said decision is incorporated by reference herein as though fully set forth.
10. In his Amended Petition, Petitioner asks this Court to vacate and set aside Petitioner's criminal convictions on the grounds that he was denied his state and federal constitutional rights to due process and denied the effective assistance of counsel.
11. There are six issues raised in the Amended Petition: 1). Was Petitioner denied his Sixth Amendment right to effective assistance of counsel and his right of compulsory process when his trial attorney failed to call Dr. Maxann Shwartz, Ph.D (hereinafter referred to as "Dr. Shwartz") to testify at either the competency hearing or at trial?; 2). Were Petitioner's convictions obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced?; 3). Did it violate Defendant's due process rights when jurors observed him shackled during trial?; 4). Was there sufficient evidence to convict the Defendant?; 5). Was there prosecutorial misconduct during the trial in this matter?; and 6). Was Defendant's right to be free from double jeopardy violated when he was convicted of two counts of Tampering with Evidence?
12. The State's Response addressed all six issues and this Court heard argument related to all six issues at the Preliminary Hearing on October 29, 2018.
13. Petitioner's first argument is that he was denied effective assistance of counsel. This Court notes that Petitioner was originally represented by Brett Carter, Law Office of the Public Defender. Later, Petitioner was represented by Jesse Cosby, Attorney at Law.

- 14 The issue of ineffective assistance of counsel was directly considered by the Supreme Court. The Supreme Court ruled that "the record before us is insufficient to establish that defense counsel was ineffective or that the decisions made were a plausible trial tactic or strategy. Accordingly, we reject this claim without prejudice to Defendant's ability to bring such a claim via habeas corpus proceedings." *State v. Ramirez*, 2016 WL 7029226 ¶ 32.
- 15 Through the above described process related to Petitioner's Petition for Writ of Habeas Corpus, this Court finds that Petitioner has been given the opportunity to establish his record related to ineffective assistance of counsel.
- 16 Petitioner argues that it was ineffective assistance of counsel to not call Dr. Schwartz as a witness at a September 15, 2008 Competency Hearing. Leading up to that hearing, Mr. Carter filed a Notice of Filing to Determine Competency of the Defendant to Stand Trial on January 14, 2008. On March 10, 2018, Petitioner was evaluated by Dr. Schwartz who rendered an opinion that Petitioner was incompetent. The record reflects that Dr. Schwartz spent a matter of hours with the Petitioner during the course of one day. The parties then stipulated that Defendant was incompetent. An Order for Commitment to the New Mexico Behavioral Health Institute at Las Vegas for Treatment to Attain Competency to Stand Trial was entered on April 17, 2008. On June 5, 2008, Petitioner was admitted to the New Mexico Behavioral and Health Institute in Las Vegas, NM, for treatment to attain competency. Petitioner was treated by Dr. Joanne Burness, Ph D (hereinafter referred to as Dr. Burness). On August 18, 2008, Dr. Burness rendered an opinion that Petitioner was competent to stand trial. The record reflects that Petitioner was at the New Mexico Behavioral and Health Institute from June 5, 2008 through

August 19, 2008 (75 days). A Competency Hearing was held on September 15, 2008. Petitioner was represented by Brett Carter. Dr. Burness testified at length about Petitioner's competency and the process that Petitioner went through to attain competency. The Court learned that Dr. Burness evaluated Petitioner and met with him on a number of occasions. She spent additional time evaluating and observing Petitioner. She also learned additional information from others regarding the Petitioner. Amongst other details related to Petitioner's competency, Dr. Burness testified that she believed Petitioner was malingering due to his actions, statements and numerous comments made by Petitioner about getting his charges dismissed once he was found to be incompetent. Petitioner was submitted to testing related specifically to malingering and testimony related to those tests was presented to the Court. Brett Carter cross examined Dr. Burness in great detail. Mr. Carter did not call Dr. Schwartz as a witness. Following the hearing, Petitioner was deemed competent by Judge Hartley. An Order finding Petitioner competent to stand trial was entered on September 16, 2008.

17. This Court notes that Mr. Carter would have been aware that, as of the date of the competency hearing, more than six (6) months had passed since Dr. Schwartz had met with the Petitioner for a matter of hours. Further, Mr. Carter would have been aware that, since Dr. Schwartz met with Petitioner, he had spent seventy-five (75) days at the New Mexico Behavioral and Health Institute being evaluated and observed by Dr. Burness and others. Dr. Burness had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc.
18. This Court finds that Mr. Carter's decision not call Dr. Schwartz as a witness was a strategic decision.

19. After an appeal related to the withdrawal of a plea agreement, Jesse Cosby entered his appearance on behalf of the Petitioner in August, 2011.
20. Competency continued to be an issue in this matter including a request by Mr. Cosby to have Petitioner's competency reevaluated in September 22, 2011. Petitioner received further forensic evaluation and treatment at the New Mexico Behavioral and Health Institute. By the time of trial, the parties had stipulated that Petitioner was competent and a Stipulated Order on Competency was filed on March 1, 2013.
21. Trial took place from October 7, 2013 through October 11, 2013. Testimony related to Petitioner's mental health was presented during trial. Petitioner argues that it was ineffective assistance of counsel for Mr. Cosby to not call Dr. Shwartz as a witness during the trial. Some of the factors that may have went into Defense Counsel's decision to not call Dr. Shwartz at trial are reflected on the record. As part of Petitioner's defense, Mr. Cosby elicited testimony from lay witnesses about Petitioner's mental health. In the afternoon on the fourth day of trial, the State began to prepare for up to two expert rebuttal witnesses, including Dr. Burness, to testify regarding Petitioner's mental health and specifically about Petitioner's malingering. Mr. Cosby argued that, if the State called said rebuttal witnesses, it would be necessary for him to call Dr. Shwartz to give surrebuttal testimony. After extensive argument, Defense Counsel began to maneuver in such a way that he would agree not to call Dr. Shwartz if the State did not call their rebuttal witnesses. In the end, Judge Hartley ruled that there would be no rebuttal witnesses and no instruction on competency. Judge Hartley even explained this decision to Petitioner, on the record, outside the presence of the jury.

22. This Court notes that Mr. Cosby would have been aware that, as of the first day of trial, it had been 2,037 days since Dr. Schwartz had met with the Petitioner. Further, Mr. Cosby would have been aware that, in the intervening time since Dr. Schwartz met with Petitioner, he had spent a considerable amount of time at the New Mexico Behavioral and Health Institute being evaluated and observed. Because of this, other mental health professionals had spent considerably more time with Petitioner and had subjected him to additional testing/observation related to malingering, etc. The State argues that Dr. Schwartz's testimony would have been irrelevant.
23. This Court finds that Mr. Cosby's decision not to present Dr. Schwartz's testimony related to Petitioner's mental state at the time of the commission of the offense, malingering, etc. was a strategic decision.
24. This Court notes the record in this matter reflects a statement from Judge Hartley toward the end of the trial that Mr. Cosby had represented Petitioner expertly and that the handling of the mental health expert witnesses was done in a fair way.
25. As noted above, the decisions made by Mr. Carter and Mr. Cosby related to the testimony of Dr. Schwartz were strategic decisions. Counsel's decisions in these areas are trial tactics and counsel is afforded wide latitude as they represented the Petitioner.¹

¹ Courts generally give great deference to counsel's trial decisions, and mistakes of trial strategy or tactics do not render counsel's performance ineffective. The attorney has the basic responsibility for the conduct of the trial on behalf of his client, and he is given wide latitude in the discharge of this responsibility. Effective representation does not require that the defendant prevail or that his lawyer be infallible, and the courts are loathe to judge attorneys on the basis of hindsight. Thus, the mere fact that trial counsel took an action which another attorney might not have taken, or that trial counsel failed to take some action which might have proved advantageous, does not render him incompetent or ineffective. Generally, the attorney's performance will be held ineffective only when there is no tactical or strategic justification for his conduct of the trial. *Ineffective Assistance of Counsel*, 5 Am. Jur. Proof of Facts 2d 267 (Originally published in 1975; updated September, 2015).

26. A defendant is denied effective assistance of counsel only where it can be shown that defense counsel has failed to exercise the skill, judgment and diligence of a reasonably competent defense attorney. *State v. Orona*, 1982-NMSC-002. And the petitioner must also prove that the incompetent representation prejudiced the petitioner's case, rendering the trial court's results unreliable. *State v. Lopez*, 1996-NMSC-036. The main question is whether the allegedly incompetent representation prejudiced the case such that, but for counsel's error, there is a reasonable probability that the result of the conviction proceedings would have been different. *Lopez*, 1996-NMSC-036, ¶ 26. *State v. Baca*, 1997-NMSC-045 (overruled on other grounds).
27. This Court finds that Petitioner has failed to show that, but for counsel's "error," there is a reasonable probability that the result of the conviction proceedings would have been different. This Court finds that the Petitioner cannot show conduct which was not that of a reasonable, competent attorney. This Court is of the opinion that no prejudice to the Petitioner occurred in this regard. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.
28. Petitioner's second issue is that the district court erred in admitting evidence of prior acts, in violation of Rule 11-402 NMRA. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 44-60. The Supreme Court ruled that Judge Hartley did not abuse his discretion in admitting the evidence of Defendant's prior acts. In his Amended Petition, Petitioner raises the same prior bad acts that were reviewed by the Supreme Court, with the addition of a claim related to the Petitioner attempting to purchase a firearm.

29. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to the claim related to the purchase of a firearm, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to Petitioner's prior bad acts, this issue cannot be collaterally attacked through a post-conviction Petition for Writ of Habeas Corpus. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

30 Petitioner's third issue is that he was prejudiced when members of the jury may have seen his leg restraints. This issue was addressed by the New Mexico Supreme Court in *State v. Ramirez*, 2016 WL 7029226, ¶¶ 39-43. The Supreme Court ruled that "Because it is unclear whether the jury saw the leg restraints and if they did, there is no evidence

that it was anything other than inadvertent or insignificant exposure, this case is not the exceptional type that goes to the violation of the foundation of presumption of innocence. Further, this case does not shock the conscience as Defendant's guilt is supported by substantial evidence in the record, including eyewitness testimony and evidence of Defendant's motive and a pattern of conduct toward Robledo . . . Accordingly, there was no fundamental error by the district court." *Id.*, ¶43

31. Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. After a thorough review, the Supreme Court affirmed Petitioner's conviction. Petitioner has failed to allege new facts that were not known at the time of trial or appeal. Petitioner has failed to ground his argument in facts beyond the record previously presented on appeal. As to any additional times that the jury may have seen Petitioner's restraints, Petitioner has failed to show that any additional facts used to support his Petition are those which could not, or customarily would not, be developed in a trial on criminal charges. This Court finds that, due to the Supreme Court's thorough review of the issue related to the jury potentially seeing Petitioner's leg restraints, this issue cannot be collaterally attacked through a post-conviction Petition for

Writ of Habeas Corpus After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

32. Petitioner's fourth argument is that there was insufficient evidence to convict him at trial

After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. There was sufficient evidence presented to support Petitioner's convictions After a meaningful and thorough review, this Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

33. Petitioner's fifth argument is that there was prosecutorial misconduct during the trial in this matter. Petitioner raises comments made by the State about Petitioner being a liar and a menace to society. The Supreme Court, in *State v. Ramirez*, 2016 WL 7029226, ¶ 64, addressed a similar argument raised by Petitioner. The Supreme Court found that, "reviewing all of the comments made, in the context in which they were made, and taking into account those comments' potential effect on the jury, the questions were isolated and minor. Accordingly, the prosecutor's remarks did not deprive Defendant of a fair trial." This Court adopts the Supreme Court's finding. The State's remarks did not deprive the Defendant of a fair trial. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

34. Petitioner's sixth argument is that his convictions violate double jeopardy. Petitioner argues that it was error that he be convicted of two counts of tampering with evidence. The Double Jeopardy Clause provides that no one will be "twice put in jeopardy" for the same crime. Principles of double jeopardy protect against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6.

Petitioner alleges that he has received multiple punishments for the same offense. If conduct is separate and distinct, there is no violation of double jeopardy and the inquiry is at an end. *See Id.* ¶ 28. Evidence in this matter showed that one count of tampering with evidence was based upon Petitioner's actions related to a firearm and the other count of tampering was based upon Petitioner's actions related to clothing. This Court finds that each count of tampering with evidence was based upon a distinct act, separated by time and space, and involved different pieces evidence. Therefore, Petitioner's convictions were not premised on unitary conduct, and no double jeopardy violation occurred. *Swafford*, 1991-NMSC-043, ¶ 28. After a meaningful and thorough review, this Court finds that the record in this case does not support this claim. This Court finds that, as to this issue, the Petitioner is not entitled to the relief requested in his Amended Petition.

DECISION

After examining the Amended Petition, exhibits, prior proceedings, having heard argument from the parties, requiring no further hearing or briefing, and based on the above discussed reasons, this Court finds the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802 NMRA, the Petitioner's Amended Petition for Writ of Habeas Corpus filed on May 18, 2018 is DENIED.


HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

Old petition

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Old petition

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CHACON-RUMAY P.O. Drawer 1326 Las Lunas, NM 87031	GDCE P.O. Box 528 Santa Rosa, NM 88435	LCCF 6908 W. Mallon Dr Hobbs, NM 88244	PNM P.O. Box 1059 Santa Fe, NM 87504	SRMCF P.O. Box 659 Las Cruces, NM 88004	SRMCF-POL P.O. Box 20005 Las Cruces, NM 88004	WRMCF P.O. Drawer 256 Grenada, NM 87705	WRMCF 151 Dexter Medical Building Rd Croydon, NM 88415

Name _____
No. _____ Unit _____

START

Date _____

ALL THESE ARE
PART OF OLD PETITION THAT
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LAWYER TO ASSIST DENIED.

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ABCDEF

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officials

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Las Cruces, NM 88004

☐ WPCF
P.O. Box 258
Orlando, NM 87000

☐ WPCF
185 Clayton Industrial Building SA
Clayton, NM 86415

Name _____
No. _____ Unit _____

Date _____

Yours

MR COSBY REFUSED to address court and request a mistrial which if raised issue probably start trial over if lawyer had done a better job of protecting my rights

Also witness Priscilla Lopez and Ricky Jaramillo eye witnesses would of testified that I am Real skinny and helped prove I was the one being chased in yard and that detective was misleading witnesses.

Counsel at trial failed to call de Fink as a witness at trial as I asked. de Fink would of testified that I was not competent and mentally ill.

I asked counsel to call de. Jane Bunniss to cross examine.

I asked counsel to investigate mental illness defense as I have family history of mental illness + intoxication history and drugs.

I did express dissatisfaction with counsel and the court failed to inquire into the matter.

WISIL MR COSBY promised if I testified I would be able to speak of sexual abuse by Niche and my moms boyfriend He lied to incriminate me.

If counsel did not lie I would not have testified and trial may have been different together these errors all the prejudice I'd be entitled to a new trial.

Counsel at trial failed to give me the entire discovery and did not discuss any of the case with me. But I wouldn't take plea.

(C)

☐ CHAMBERLAIN
P.O. Drawer 120
Las Cruces, NM 87031

☐ GOLF
P.O. Box 120
Santa Fe, NM 87501

☐ LOCP
6800 W. Hilltop Dr.
Hobbs, NM 88240

☐ ZNM
P.O. Box 100
Santa Fe, NM 87504

☐ SHMCP
P.O. Box 100
Las Cruces, NM 88004

☐ SHMCP-POU
P.O. Box 10000
Las Cruces, NM 88004

☐ WNBACF
P.O. Drawer 250
Grants, NM 87020

☐ HNBACF
183 Doctor Michael Justice Rd.
Chaparral, NM 88015

Name _____

No _____

Unit _____

Date _____

Counsel did not call ISTEAM nor was I the victim of
testified Robledo hit me and was violent when
I was 13 and he fought Robledo.

also Jose Ramirez would testify Robledo was
aggressive violent + attacked him everytime
he tried to go see me.

Counsel failed to get medical records evidence
to show I was physically injured at time of
crime.

There was a complete breakdown in communication.

I want the court to know I asked twice on
record to speak to show I timely moved for
removal of counsel, but the court refused to
let me say anything about conflict between
I and counsel.

I tried to put in record what trial counsel said
after I tried to file him.

Court refused to inquire into it
if the court had I'd of got a new attorney or
a pro se
+ asked to represent myself.

I was denied my Sixth Amendment right to
effective assistance of counsel.

I ask for an Evidentiary Hearing to now allow
me to speak on record.

Thanks very much

1

FORM 5-704. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-704

(Name of warden, jailer or other person having power to release the petitioner)

Old Petition

Respondent

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS

1. ALBERT RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at PNM Penitentiary of Albuquerque (name of facility and county of detention) by WARDEN GUERRA FRANCO (name and title of person having custody).

2. This petition

☒ (W) seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

☐ (W) challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

?4 INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL
AND APPEAL? COUNSEL ON APPEAL →

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

I TRIED TO SPEAK
TO COUNSEL TO NO
AVAIL. IMPOSSIBLE
COUNSEL TO

COUNSEL MR. COSBY. BEFORE TRIAL BEGINS AND AFTER I
TRIED TO FIRE HIM IN FRONT OF JURY did VERBALLY
ASSAULT AND make threats stated, Stupid little Bitch
I promise to be INEFFECTIVE ASSISTANCE IF you keep on
saying you want to GO TO TRIAL AS I INSIST. I HOPE
YOU GET LIFE.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

(I don't know what this means sir)

I'll try, IT IS A CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE AT TRIAL + ON appeal
I've wrote on Extra sheets of papers to
explain. SOME FACTS BEST AS I CAN.
+ EXHIBITS - EVIDENCE
ALLEGATIONS

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES, I WAS TOLD APPEAL WAS denied to file
A HABEAS PACKET. NOW HERE IS THE
HABEAS.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

I raised this issue in first HABEAS
now this one is to ~~resubmit~~ Resubmit it
And fix it.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

7. Briefly describe the relief requested:

TO BE APPOINTED ASSISTANCE FROM
PUBLIC DEFENDER post conviction division
to assist me to get AN EVIDENTIARY
HEARING TO PROVE THE ALLEGATIONS ARE TRUE

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

D-0905-CR-2007-00434 I'M NOT
SURE

(b) docket number:

D-0905-CR-2007-00434 JURY
TRIAL

(c) name of judge:

Teddy L. HARTLEY

(d) name and location of the court in which the proceeding was held.

700. N. MAIN ST
9th JUDICIAL DISTRICT COURT

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

9. State the date of the final judgment, order or decree for confinement.

JANUARY 8th 2014.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligibility AFTER 30 yrs plus two 3 yrs
two tempering with evidence.
1st degree murder
2 temper w/ evidence

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE P. COSBY

P.O. Box 3330

14. Did you appeal your conviction?

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

☒ Yes (Go to 15)☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

9th Judicial District Court.

New Mexico Supreme Court of Appeals.

(b) The case name and docket number for each appeal:

(Don't know how to do this.)

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed Sometime Around August 2013.

Dec 1st 2016.

(d) A summary of the grounds upon which each appeal was based.

Competency Revolution, Ineffective assistance
 of counsel, improper comments on silence, prosecutor
 misconduct, prior bad acts. Specifier

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(e) The result of each appeal:

denied.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG

505. Marquette N.W 87102

505. 796-4405

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding. *petition Habeas, denied, but I re put in a motion to RECALLS, etc, amend, revised petition.*

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

petition Habeas, But this one is to
Resubmit it to try to do it properly

(b) The name and date of each case:

PM Judicial district court, State of N.Mex. v ASST
RANIER

(c) the docket number:

NOD-0905-CR-2007-00434

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

NA

(e) the result of each proceeding. (Attach a copy of each decision.)

denied,

(f) The issues raised in each proceeding:

ineffective assistance of counsel,

(g) State whether a hearing was held in connection with each of these proceedings:

no

FORM 5-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 5-701

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

NO

19. Do you seek the appointment of counsel to represent you?

☒ Yes

☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF

SANTA FE

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On _____, _____ (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

*am
TJ
Court*
Court (name of court)

88101
(city), New Mexico, _____ (zip code)

(Signature)

AIBERT JOSE RAMIREZ

(Address)

P.O. BOX. 1059 SANTA FE 87501

PNM No., if applicable

NOTARIZE PLEASE

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

SUBSCRIBED AND SWORN TO before me this 12 day of JULY, 2023, by

(Name of petitioner)

AIBERTO RANIERI

Notary Public

My Commission Expires:

4/23/2019

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MAIL (describe manner of service), this 13 day of JULY, 2023.

(Signature of petitioner)

AIBERTO RANIERI

USE NOTE

Credits

[Adopted effective Aug. 1, 1989 Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

1

After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2

Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through July 1, 2015.

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

End of Document

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THE WAY TO USE THE
EXHIBITS WITH THE ISSUES
I CLAIM + PRESENT.

JUST GO TO PAGE AND
OR EXHIBIT OR BOTH.

I AM NOT A LAWYER,

I HAD NO MORE PAPER
TO MAKE IT NICE + NEAT.

I HAD TO SEND IT OUT
ASAP. + COPIES + ALL.

IM BEING IGNORED BY
LAW LIBRARY IN PRISON.

PLEASE. EXCUSE MY
MISTAKES. I TRIED
MY BEST.

Facts + transcript
 directly to prove claim of
 INEFFECTUOUSNESS COUNSEL

See Exhibit 4, 5
 1, 2, 3, 4, 5

MR. COSBY COUNSEL TRIAL DENIED
~~and~~ and failed to provide effective
 ASSISTANCE.

A WEEK BEFORE TRIAL
 I ASK TO FIRE MY ATTORNEY
 DURING TRIAL IN COURT I
 FIRED MY ATTORNEY. EACH TIME
 THERE NO INQUIRE INTO WHY
 I WAS EXPRESSING DISSATISFACTION
 I WAS TOLD TWICE BY MR
 COSBY BEFORE TRIAL STARTED
 AND AFTER I TRIED TO FIRE
 HIM IN COURT DURING TRIAL
 COSBY STATED - I AM A LITTLE
 STUPID BITCH AND ~~and~~ MADE
 THREATS, BY SAYING I HOPE
 YOU GET LIFE, I ALREADY TOLD
 YOU TO TAKE THE PLAN OR YOU
 WON'T BE PROVIDED EFFECTIVE
 ASSISTANCE OF COUNSEL.

I WAS NOT ABLE TO PUT THE
 ALLEGATIONS ON RECORD.

BUT SEE EXHIBIT'S (10) page 1, 2, 3, 4, 5
 (10) page 38-47

See EXHIBIT
page 47 page 53, 54, 55, 55.57
EXHIBIT 13

(page 2)

I TRIED to address court my lawyer was
NOT Filing ANY OF my motions I ASKED him
to. CHANGE OF VENUE, EVEN though there
WAS PRE-trial publicity concerning the
case in small community of CUBS, NEW
MEXICO. Some of this publicity inaccurately
described Mr Ramirez as having attacked
alleged victim on prior occasions, THE
publicity WAS inaccurate and highly
prejudicial and defense counsel should
have at least raised the issue and
requested a HEARING. SEE EXHIBIT 13

Counsel should have at least Filed a
motion to suppress evidence that
was illegally seized + inadmissible
and highly prejudicial SEE EXHIBIT 11
or requested a HEARING ON THIS ISSUE

SEE 11
EXHIBIT
page
48,
49,
50

Counsel did NOT provide me with all
discovery, would NOT discuss who
he was planning to call as witnesses
and would NOT discuss intent to
present the defense OF INSANITY
Counsel did NOT file a Notice
OF INTENT to present the defense
EXHIBIT 1) page - 1, 2, 3, 4, 5

SEE 3
page
3, 4

page 3

Exhibit 1, 3, 10 page 4, 10, 12, 13
page 47

Insanity, But Instead of advocating zealously on BEHALF OF MR. RAMIREZ'S DEFENSE, COUNSEL INFORMED THE COURT THAT HE WOULD NOT BE PRESENTING EXPERT PSYCHIATRIST, OR PHYSICIAN, BECAUSE MR. RAMIREZ WOULD DISCUSS THE CASE WITH HIM AND IS UNABLE TO ASSIST IN THE DEFENSE.

COUNSEL FAILED TO ALERT THE COURT TO IMPORTANT FACTS IN ARGUING THE CASE. MR. RAMIREZ WAS INJURED IN AN ACCIDENT IN 2007 WHICH HE BEGAN TAKING ANTI-DEPRESSANT MEDICATION, & OTHER MEDICATIONS, THIS BECAME SEVERE DEPRESSION AS HE WAS UNABLE TO WALK, WORK, OR DRIVE, COULD ONLY WALK WITH CRUTCHES, SUFFERED FROM PSYCHOSOMATIC DELUSIONS, HALLUCINATIONS, ~~AND~~ COUNSEL DID NOT PRESENT EVIDENCE OF THE MEDICATION MR. RAMIREZ WAS TAKING.

MR. RAMIREZ FELT HIS LAWYER WAS AGAINST HIM, SEE page 4, 10, 12, 13
Exhibit 1, 3, ~~10~~

SEE EXHIBIT 1, page 1-3
 EXHIBIT 10, page 4 page 4

COUNSEL Failed to File any
 WITNESS list WHATSOEVER IN
 SUPPORT OF MR. RUIZ'S DEFENSE
 OF INSANITY and lack of capacity

MR. RUIZ had several witnesses
 he wished to present in support of
 his defense, including his Aunt,
 Sister, Brothers, Friends, and
 doctors who treated him after
 accident.

COUNSEL failed to show courts JENNIFER said went
 MR. RUIZ asserts that he I was to cooperative
 received ineffective assistance of COUNSEL for various reasons that
 are, unfortunately, not on
 record, because those matters
 were not preserved in the record.

MR. RUIZ Request ~~that~~ that the
 court grant him an attorney to
 assist him in habeas proceedings
 and to hold an evidentiary
 HEARING. ON INEFFECTIVE OF
 COUNSEL.

Page 1-5
 See Exhibit 1

Page 5

Page 5

EXHIBIT 1. 2:12 05 PM
↓ 10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
COUNSEL VERBALLY ASSAULTED ME I
ADVISED COUNSEL. I DID FALL DOWN
IN FRONT OF JURY BECAUSE OF
THE SHACKLES ON MY LEG TIED TO
THE TABLE, WHEN I WAS TOLD TO
RISE, SHERIFF CALLED ME TO DOOR
I FELL, JURY SAW MY SHACKLES,
WHILE MY LAWYER WENT TO TALK TO THE
JUDGE THE JUDGE, THE SHERIFF
DOUBTLY THREATENED ME AND TOLD
ME TO SAY I DID NOT FALL.
I WAS ASKED BY JUDGE DID YOU
FALL. I SAID YES THEN NO
BECAUSE SHERIFF WAS GESTURING
ME TO SAY NO. ONLY D.A.
WOULD SEE. SHE WAS SHAKING
HEAD & FINGER AND SAYING NO.
I TOLD MY LAWYER THIS AND
ASK HIM WHY DONT HE SAY
IT TO THE COURT.
HE SAID NO I ALREADY MADE
UP MY MIND.

7.6
Exhibit 1 pages

page 6

Counsel Failed to Alert the court that
Told him I did Fall, JURY Saw
my SHOULDER, SHIRT OF CLOSETTY
MANIPULATED ME TO SAY NO.
(TO GO AGAINST MYSELF) ASK DOCKETY CHANDLER
COUNSEL Failed to Call, DR FINK,
DR. BURNSS, DR. MAXINE SWARTS
WHO I ADVISED I HAD BEEN
SEXUALLY ABUSED MY MOMS
BIG FRIEND, + NEIBOR SAM SAIZ
SEE EX.B. + 24, 5 PAGES 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

COUNSEL Failed to Call witness, Priscilla
LOPEZ, RICKY TORRILLO, to HELP PROVE
I WAS THE ONE BEING CHASED IN
YARD, to HELP PROVE MY TESTIMONY
+ Truth Full,

SEE EX.BIT 7, 8, 10

COUNSEL Failed to investigate family
HISTORY OF MENTAL ILLNESS, and
family witnesses to defense OF
INSANITY, 4. 5.

I would try to call him and
write to talk he ignored me or was
too busy to. see EX.BIT. 4, 5, 7,
page 18 to 24 + 27 + 30 + 47

SEE

See page 7

EXH. + 2

EXH. + 4.5

page 17

EX. Bit page 25

COUNSEL failed to keep promises made, of being able to testify about sexual abuse and that he would file motions I asked him to file

page 47

SEE EXHIBIT 4, 5, 10

COUNSEL failed to call my father & brother who would testify Eladio Fabelo was violent and had assaulted me and them in past.

My father and brother are willing to testify to this at hearing.

COUNSEL failed to call Dr Maxine Swartz as witness who would testify as to my insanity defense and sexual abuse and incompetency

SEE EXHIBIT 9, 10

page 39 to 43 + 47

COUNSEL failed to present my defense at trial.

~~COUNSEL failed to give me advice when I asked once I was drunk when I killed my step dad. do I tell that or not He didn't~~

COUNSEL failed to give me advice when I asked once I was drunk when I killed my step dad. do I tell that or not He didn't

4210/22

page 8

COUNSEL Failed to GET MEDICAL RECORDS to SHOW I WAS ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of the plea did not explain the maximum & minimum time I was facing even though I tried to ask. (SEE PAGE 4) S, 4

COUNSEL Failed to Be respectful and responsible and fulfill his duty of loyalty and advocate to me his client.

COUNSEL Failed to Argue I was the one being chased by Robledo that I was 100 pounds and Robledo 175 pounds, not 145 as medical examiner said, page - 7-10

SEE EXHIBITS 2,

COUNSEL Failed to Alert court I was hearing voices during trial. SEE EXHIBIT, 1, 1A, 4, 5, 6

page 1 through 5

page 11

Exhibit 1.

Counsel Failed to communicate
Back with Mr. Ramirez, even
though Mr. Ramirez tried
to no avail.

Mr Ramirez received Ineffective
Assistance of Counsel and denied
his constitutional right to
effective assistance of counsel.

I Mr. Ramirez ask the court
to appoint attorney to assist
with habeas process.

Mr Ramirez ask for an evidentiary
hearing to develop the record
necessary to prove allegations
- a disposition hearing also. -

Also attached witness statement by
my brother Jose Ramirez who spoke
to Mr Cosby and told me
to file my attorney.

Sincerely

A. B. S. T.
Ramirez

PACK
12

THE EXHIBIT'S
ARE ONLY LABELED
1 TO 13 and pages 1-56
I did NOT label
1A, 1B, 1C, NO.
ONLY, 1 TO 13.

THEY ARE ALL RELEVANT
TO CERTAIN FACTS
+ ALLEGATIONS TO
SUPPORT MY CLAIM
OF INEFFECTIVE ASSISTANCE
OF COUNSEL TRIAL +
APPELLATE ATTORNEY.

page 13

I ASK the courts
All them to NOT
dismiss my ~~CASE~~ ~~PRO~~
Habeas Because
I'm pro se, please appoint
me an attorney OR grant
an evidentiary hearing, or
preliminary hearing let me
prove my claim I
NEED A CHANCE.

I do have A WITNESS my
brother who CAN testify
to the THREATS made by
MR. COSBY. COSBY told my
brother to tell me to plea
my brother KNOWS OF the threats

COUNSEL did advise me to take
PICA But would NOT EXPLAIN
What the PICA WAS.

Also COUNSEL did NOT tell
me the maximum time
I was FACING
I did NOT know.
I thought the most
I could get was
154ES.

I did NOT know
MR. COSBY would NOT
ANSWER any of my questions
OR EXPLAIN anything to me.

He was disrespectful,
MEAN, Rude, unprofessional
and did NOT provide
effective assistance.

COUNSEL would NOT call all witnesses
or file motions, change venue,
for private investigator, new
computer search, - See Ex. 51 & 16

Page: _____

IF NOT FOR TRIPS COUSINS
EFFECTIVE ASSISTANCE OF
COUNSEL MR. FARMER WOULD OF
HAD A STRONGER CASE GOING
INTO TRIAL. MR. FARMER
WAS PREJUDICED BY COUNSEL
LACK OF EFFECTIVE ASSISTANCE
PLEASE I WOULD TRY @ FOR
AN ATTORNEY IF I HAD
MONEY EVEN AT SENTENCING
COUNSEL FAILED TO PROVIDE
EFFECTIVE ASSISTANCE.
THIS REAS DIVIDED A DAY

THIS IS TO HELP PROPERLY PRESENT
PETITION FOR HABEAS. THE FACTS
IN RECORD AND OFF RECORD.
THE CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL AT
TRIAL AND INEFFECTIVE
ASSISTANCE OF APPEALING
COUNSEL.

I AM TRYING TO SHOW
I SHOULD BE GIVING
AN OPPORTUNITY TO SHOW
AND PROVE MY CLAIM +
ALLEGATIONS AND TO RECEIVE
ASSISTANCE FROM PUBLIC
DEFENDER OFFICE. ON POST
CONVICTION ASSISTANCE.

PLEASE AND THANK YOU
SO MUCH
FOR YOUR TIME HELP
KINDNESS GOD BLESS

IF counsel had effectively represented MR Ramirez. It is likely that I would OF Had a STRONGER CASE going into trial and this would have affected MR RAMIREZ'S decision to enter into a plea. MR RAMIREZ complained on more than ONE OCCASION TO THE JUDGE about his Frustration with defense COUNSEL. MR. RAMIREZ WAS denied effective ASSISTANCE OF COUNSEL.

I ASK for an ATTORNSY TO HELP. EVIDENTARY HEARING,

I ASK to Resubmit my Habeas petition this one to SEND TO SUPREME COURT.
PLEASE AND THANK YOU FOR
YOUR TIME. GOD BLESS

PO Box Alberto
1059 Ramirez
Sanle fern 69897
87807

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
1:58:18 PM	CHANDLER	RXEX - DO YOU UNDERSTAND THE WORD PREMEDITATE, FIRST TIME YOU SHOT ELADIO WAS IN THE GARAGE, YOU PLANNED ON KILLING HIM IN THE GARAGE
1:59:03 PM	COSBY	RDEX - FURTHER COMMENTS
1:59:45 PM		#2 WITNESS JOSE RAMIREZ JR. CALLED BY D / SWORN / DEX
2:01:11 PM		HOW OLD WERE YOU WHEN MR. ROBLEDO CAME INTO THE PICTURE
2:01:52 PM		DID YOU EVER BECOME AWARE OF HIM NOT LIVING IN THE HOUSE, HE CAME TO LIVE WITH ME FOR ABOUT 3 TO 4 MONTHS
2:02:33 PM		I ASKED HIM TO LEAVE AT THE END, I WAS ASKING HIM TO GO TO SCHOOL AND HE WOULD NOT FOLLOW RULES.
2:03:05 PM		DID HE HAVE ANY PROBLEMS WITH ELADIO ROBLEDO
2:03:46 PM		HE DID NOT HAVE ANY HATRED TOWARD'S HIM
2:04:34 PM		HOW YOU BECAME AWARE OF THE PROBLEM
2:04:52 PM		BENCH CONFERENCE
2:06:33 PM	COSBY	WERE YOU AWARE OF ISSUES BETWEEN YOUR BROTHER AND SOME OTHER PEOPLE
2:07:37 PM		REMOVE DFT FROM COURTROOM
2:07:49 PM		JURY EXCUSED FROM COURTROOM
2:08:47 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY
2:08:56 PM		THE COURT HAS ORDERED THE DFT TO THE OTHER ROOM TILL WE FIGURE OUT WHAT TO DO
2:09:11 PM	CHANDLER	THERE IS CASE LAW IN NM READS IN TO RECORD
2:10:59 PM		HAVE A COPY OF CASE, ASKS COURT TO BRING HIM IN HERE AND GIVE HIM A STERN WARNING, IT WOULD BE THE STATES PREFERENCE TO REMAIN IN THE COURTROOM
2:11:42 PM	COURT	WANTS TO SAY THIS ON THE RECORD MR. COSBY IS REPRESENTING THIS DFT AND IT IS DIFFICULT TO WORK WITH
2:12:05 PM	COSBY	AT THIS JUNCTURE BY HIS OWN CONDUCT, HE HAS PUT FORTH TO THE JURY THAT I AM NOT REPRESENTING HIM, I KNOW THAT HE CREATED THE SITUATION, EVEN THOUGH THE COURT HAS ADMONISHED, THE FACT REMAINS HE HAS FIRED ME IN OPEN COURT, IF WE WANTS TO FIRE ME THAT IS HIS PEROGATIVE, IF THAT IS HIS DESIRE HE CAN GO FORWARD REPRESENTING HIMSELF ETC.
2:14:07 PM		IT IS HIS RIGHT TO REPRESENT HIMSELF, IF THAT IS HIS DESIRE AND HE WANTS TO REPRESENT HIMSELF

10/10/2013

11-01-18
page 1

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

page 28

Time	Speaker	Note
8:57:26 AM	CHANDLER	CLOSING ARGUMENT
10:10:27 AM	CHANDLER	CONTINUES CLOSING ARGUMENT
10:45:29 AM		CONTINUES CLOSING ARGUMENT
10:46:27 AM	COSBY	CLOSING ARGUMENT
10:58:56 AM		CONTINUES CLOSING ARGUMENT
11:30:00 AM	CHANDLER	BRIEF REBUTTAL
11:39:18 AM		CONTINUES BRIEF REBUTTAL
11:40:01 AM	COURT	READS INSTRUCTION 10 BEFORE DELIBERATION IS BEGUN
11:41:14 AM	COURT	ANNOUNCES ALTERNATES
11:42:36 AM		JURY EXCUSED TO BEGIN DELIBERATION AND ALTERNATES EXCUSED
11:43:09 AM	DFT	DFT WANTS TO SAY SOMETHING
11:44:05 AM	COURT	YOU CANNOT SAY ANYTHING
11:44:13 AM	OFF RECORD	
3:03:40 PM		JURY SEATED IN BOX
3:04:08 PM	COURT	READS THE VERDICT GUILTY COUNT 1 1ST DEGREE MURDER
3:04:45 PM		GUILTY COUNT 2 TAMPERING WITH EVIDENCE
3:04:58 PM		GUILTY COUNT 3 TAMPERING WITH EVIDENCE
3:05:14 PM	COURT	DFT WISHES TO HAVE THE JURY POLLED, JURY POLLED BY NUMBER
3:06:35 PM	COURT	READS FINAL INSTRUCTION TO JURY BEFORE EXCUSED
3:07:13 PM		JURY EXCUSED FROM SERVICE
3:07:51 PM	CHANDLER	STATES REQUESTS TO MOVE INTO SENTENCING
3:08:07 PM	COSBY	ASKS FOR A 60 DAY EVALUATION
3:08:21 PM	CHANDLER	THIS SENTENCE IS A LIFE PLUS SIX YEARS
3:09:02 PM	COURT	IT IS MANDATORY TO LIFE
3:09:15 PM	COSBY	HE HAS A RIGHT TO AN ALLUCION
3:09:40 PM	COURT	WE WILL SENTENCE AFTER PRESENTENCE REPORT
3:09:59 PM	COSBY	REQUESTING A 60 DAY EVALUATION
3:10:16 PM	COURT	ORDER THE PRE SENTENCE REPORT ,
3:10:31 PM	RECESS	

Exhibit 6
 10/11/2013
 Tried to Alert Court of
 Conflict of Interest Between
 Counsel and I and now
 Record. I was deceived.

Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 058
SSN: [REDACTED] 7793

Page 2

page
29

Date: 04/17/2007 12:15
Provider: KIRAN SHARMA MD

Musculoskeletal system:

General/bilateral * Musculoskeletal system. normal

Knee:

General/bilateral * Knees showed abnormalities * No tenderness on palpation of the knee * No pain was elicited by motion of the knee * Knees demonstrated normal movement * Knees demonstrated no muscle weakness

Right knee * Examined

Left knee * Examined

ASSESSMENT

Bilateral knee pains

PLAN

KIRAN SHARMA MD ordered

- Urinalysis and urine drug screen

- CBC

- A comprehensive metabolic panel

- Serum TSH level

- An X-ray of both knees

- Consultation with a physical therapist

* Refer to MHR for counselling and further evaluation

trying to call mom to find out more about his mental health, unable to reach her

I was
Injured

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/17/2007 14:36

(EX-B. + 7.)

page
29

Patient: 14154.1 - ALBERTO J. RAMIREZ
DOB: [REDACTED] 88
SSN: [REDACTED] 7793

Page 2

Date: 04/24/2007 11:30
Provider: KIRAN SHARMA MD

Anxiety disorder NOS

PLAN

Motrin 600 MG TABS, SIG.tid, Qty 21, Days 7, Refills:0
Lexapro 10 MG TABS, SIG.qd, Qty 30, Days.30, Refills.2
Refer to umm orthopaedics
pt has anger issues and is somatizing
detailed discussion with brother about pls visits
otc knee brace, pt needs pshychiatric help
refer to MHS, pt is having paranoia

KIRAN SHARMA MD

Entered data sealed by: KIRAN SHARMA - LCBS Date: 04/24/2007 11:14

EXHIBIT 7

30
page

page 30

EXHIBIT 7

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Note
3:06:50 PM		AWARE OF BROTHER BEING PLACED IN FOSTERCARE
3:07:31 PM		GIVING STATEMENT TO DETECTIVE ON JULY 12TH THE DAY OF SHOOTING
3:08:35 PM		TOLD MEMBERS OF JURY NEVER SAW HIM ACT OUT, HE WOULD GET UPSET
3:09:22 PM		DOES NOT REMEMBER WHAT SHE TOLD DETECTIVE, NOW SHE REMEMBERS WHAT SHE TOLD DAVID LOERA
3:11:35 PM		CONTINUES TO REFER TO STATEMENT SHE MADE
3:12:59 PM		BENCH CONFERENCE
3:13:50 PM	CHANDLER	CONTINUES TO REFER TO HER STATEMENT
3:14:33 PM		GO BACK TO THE PHONE CALL, HE WAS MAD AT YOU THE DAY BEFORE THE SHOOTING, "WHAT IS WRONG WITH BEING MAD EVERYBODY GETS UPSET"
3:15:09 PM		I DID NOT KNOW HE WAS TRYING TO GET A GUN
3:16:00 PM		REFERS TO HER STATEMENT
3:16:06 PM	COSBY	PAGE AND LINE PLEASE
3:16:20 PM		NO I DID NOT KNOW, EVERYBODY KNEW NOT TO GIVE HIM A GUN
3:16:55 PM		TRAINING, EDUCATION AND EXPERIENCE
3:17:05 PM		YOU WANTED TO KNOW WHY HE DID THAT WHEN HE CALLED FROM JAIL, NOBODY WAS THERE WHEN IT HAPPENED
3:18:13 PM		YOU DO NOT KNOW WHAT HAPPENED AT 512 W. 6TH, "I WAS NOT THERE"
3:19:18 PM		YOU HAVE BEEN TALKING TO HIM EVERY NIGHT
3:19:42 PM		BENCH CONFERENCE
3:20:41 PM	COSBY	RDEX - ABOUT YOUR STATEMENT ABOUT WHAT YOU ARE SAYING YOU WERE TELLING YOUR BROTHER TO APOLOGIZE TO YOUR MAMA
3:21:58 PM		NOT SURE WHY HE WAS WEARING CRUTCHES
3:22:30 PM	CHANDLER	SPECULATION OBJECTION
3:22:40 PM	COSBY	RESPONSE ABOUT WHO GAVE HIM THE GUN "HE WAS HAVING ISSUES ABOUT HE THOUGHT SOMEBODY WAS AFTER HIM"
3:24:25 PM		SHE ALREADY KNEW ABOUT SHOOTING BECAUSE HER MOM CALLED HIM
3:24:37 PM		SHE BARELY TALKED TO ELADIO, NEVER CLAIMED HIM AS STEP FATHER
3:24:59 PM	CHANDLER	RXEX - YOUR CONCERN WAS ABOUT ALBERT'S STATE OF MIND
3:25:49 PM	COSBY	OBJECTION

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ST VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

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page

Time	Speaker	Note
12:56:09 PM		JURY BEING SEATED IN BOX
12:57:14 PM		COURT IN SESSION, JURY DFT AND ALL PARTIES PRESENT
12:57:56 PM	CHANDLER	XEX - ABOUT YOUR TIME IN SCHOOL, I DON'T KNOW JUST GOT HELD BACK
12:59:19 PM		I CANNOT ANSWER IF I DID GOOD IN SCHOOL
12:59:43 PM		YOUR DAD WOULD PROVIDE YOU \$500 A MONTH TO STAY IN SCHOOL, WHEN YOU GET SOCIAL SECURITY, IT IS THE TRUTH IT WAS COMING FROM MY DAD'S MONEY
1:01:03 PM		YOU HAD A DRIVER'S LICENSE IN 2007, YOU HAD A CELLPHONE, YOU PAID THE CELLPHONE BILL AND YOU HAD A JOB AT MCDONALDS
1:02:25 PM		ONLY DID CERTAIN THINGS AT MCDONALDS
1:03:05 PM		YOU SPEAK ENGLISH AND SPANISH, I UNDERSTAND A LITTLE BIT AND CAN SPEAK A LITTLE BIT, I AM AMERICAN
1:04:38 PM		YOU FIRST MET ELADIO WHEN YOU WERE APPROX 5 OR 6 YEARS OLD
1:05:36 PM		YOU DIDN'T LIKE ELADIO ROBLEDO "THAT IS AN IMPROPER QUESTION TO ASK" I LIKE EVERYBODY I JUST DON'T LIKE SOME THINGS PEOPLE DO, THAT IS HOW IT IS SUPPOSED TO BE
1:06:12 PM		ELADIO AND YOUR MOTHER LIVED AT 512 W. 8TH ST. "WHEN" JULY 2007
1:07:27 PM		YOU HEARD THAT OFFICER AGUILAR SERVED YOU THE NO TRESPASS ORDER, "YES"
1:07:44 PM		AFTER RECEIVING THE NO TRESPASS ORDER YOU RETURNED BACK TO THE HOUSE WHERE DEBRA LIVED
1:08:40 PM		AT ONE TIME YOU BROKE OUT THE FRONT WINDOW OF YOUR MOTHER AND ELADIO'S HOUSE
1:09:40 PM		ARE YOU AWARE YOUR MOTHER CALLED THE POLICE ABOUT THAT INCIDENT "NOT AWARE, IF SHE DID OR NOT"
1:10:12 PM		YOU BROKE OUT A CAR WINDSHIELD WITH YOUR CRUTCHES, DID SHE CALL THE COPS ABOUT THAT "YES"
1:10:58 PM		YOU KNOW WHERE GROSSHAIR GUN SHOP IS IN CLOVIS "YES"
1:11:15 PM		YOU WENT IN THERE AND DEMANDING A GUN
1:11:42 PM		YOU WANTED A REVOLVER "I JUST ASKED FOR GUN"
1:12:27 PM		YOU FILLED OUT PAPERWORK TO PURCHASE GUN
1:12:46 PM		YOU DROVE A CAR TO GUN SHOP
1:13:42 PM		YOU WERE TRYING TO GET THINGS RIGHT

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EXHIBIT 7

Exhibit 8

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1 its discretion in denying a mistrial.

2 **D. Defendant was not prejudiced by the jury seeing his leg restraints**

3 (39) Defendant's fourth issue is that he was prejudiced when the jury saw his leg
4 restraints when he stumbled as he stood up at one point during the first day of trial.

5 However, he concedes that he did not ask the court to make a finding of prejudice or
6 declare a mistrial and asks this Court to review the possibility that the jury saw his leg
7 restraints for fundamental error. The State argues that the factual record does not
8 support Defendant's contention that the jury saw him shackled because all the parties
9 agreed that the table skirt blocked the jury's view.

10 (40) "To preserve a question for review it must appear that a ruling or decision by
11 the district court was fairly invoked." Rule 12-216(A) NMRA. When the claim is not
12 properly preserved, we consider the claim under the fundamental error exception to
13 the preservation rule. *See State v. Holly*, 2009-NMSC-004, ¶¶ 40-42, 145 N.M. 513,
14 201 P.3d 844 (reviewing defendant's claim that a juror may have seen defendant
15 handcuffed for fundamental error because the defendant did not request a mistrial, did
16 not ask the trial court to strike the juror, or seek a finding of prejudice), *State v. Silva*,
17 2008-NMSC-051, ¶ 11, 144 N.M. 815, 192 P.3d 1192 (citing Rule 12-216(B)(2)
18 NMRA).

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E+Bixy

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for his expert's presence if sur-rebuttal was allowed. [Supp. CD, 3:55:15 to 3:56:35, 4:02:23 to 4:02:35, 4:08:18 to 4:08:53]

Shortly thereafter, based on the defense's agreement not to pursue jury instructions or argue competency, insanity or the inability to form specific intent [See Supp. CD, 3:51:56 to 3:52:00], the prosecution announced it was forgoing presentation of a rebuttal case and releasing its expert witnesses. [CD 10-10-13, 4:34:39 to 4:36:02] When Defendant objected to Mr. Cosby's strategy, the trial court assured Defendant he was being well-represented and explained it would not have approved Mr. Cosby's jury instruction decisions if doing so would deny Defendant a fair trial. [CD 10-10-13, 4:36:02 to 4:39:12] Defendant persisted Dr. Schwartz's testimony was essential to his having a fair trial and to his appeal. [CD 10-10-13, 4:41:38 to 4:42:15]

The trial court instructed the jury on first-degree murder, second-degree murder and, over the prosecution's objection, voluntary manslaughter. [CD 10-11-13, 9:01:50 to 9:03:07; see RP 663; RP 664; RP 665-66]

IV. Disposition Below

The jury deliberated approximately three hours before returning verdicts finding Defendant guilty of first-degree murder, and the two counts of tampering with evidence. [CD 10-11-13, 11:45:13 to 3:06:20]

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NO DEFENSE
AT TRIAL

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CR1 CHAMBERS

Exhibit 9

Time	Speaker	Note
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED, IT IS THE TIMELINE. <i>What is his name?</i>
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED,
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THERE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE, I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:11 AM		I TRIED TO EXPLAIN TO DR. FINK, IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING, AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

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Exhibit 9
SEX ABUSE

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Exhibit 9

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II. Defendant has not satisfied the requirements for consideration of a claim of ineffective assistance of counsel on direct appeal.

The facts contained in the record of Defendant's case do not establish a prima facie case of ineffective assistance of counsel warranting remand of Defendant's case for an evidentiary hearing. *State v. Crocco*, 2014-NMSC-016, ¶ 14. If Defendant wishes to pursue his claim of ineffective assistance of counsel, he should consider pursuing a habeas corpus proceeding. *See id.* ¶ 13; *see* Rule 5-802 NMRA.

When analyzing a claim of ineffective assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). This Court measures a claim of ineffective assistance of counsel against *Strickland's* two-part test, which requires a defendant to show first that counsel's performance "fell below that of a reasonably competent attorney" and then that he suffered prejudice because of the deficient performance. *State v. Ortega*, 2014-NMSC-017, ¶ 55.

A counsel's performance is not deficient where "a plausible, rational strategy or tactic" could explain counsel's conduct. *Id.* To show prejudice a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*

6

Exhibit 9

37 case.

That afternoon, to demonstrate his lack of competency, Defendant described a litany of psychological ailments [CD 10-9-13, 1:37:36 to 1:38:55], and claimed he was unable to understand the proceedings. [CD 10-9-13, 1:43:46 to 1:44:11] Later, notwithstanding Mr. Cosby's expressed concern about Defendant's lack of cooperation, Defendant made statements evincing an understanding of the implications of testifying and of the jury's role in weighing the evidence. [CD 10-9-13, 2:41:00 to 2:43:54] He pointedly reminded the trial court that during his previous trial he cried hysterically and told the court he could not function properly when hysterical. [CD 10-9-13, 2:44:45 to 2:45:18]

The next day, Defendant demonstrated his continuing understanding of the process, including the value of the appellate record, by forcing creation of a record regarding Mr. Cosby's decisions about the witnesses who would testify, and by making a statement about how he had not been properly evaluated and represented, the trial court's disregard for his outwardly irrational behavior and the trial court's failure to consider how the jury might be affected by media coverage of his trial. [See, e.g., CD 10-10-13, 9:21:02 to 9:22:38, 9:23:18 to 9:25:59] Significantly, although Defendant was complaining he could not understand when people communicated with him, he recognized the court's authority by thanking it for allowing him to speak. [CD 10-10-13, 9:22:35 to 9:22:42] He telegraphed a clear understanding of the significance of the proceedings by saying he was fighting for

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back

told the court that he had been offered a plea of guilty but mentally ill. He stated "Which I was very confused of the charges I have in the first, they said it's... I have no clue what those are for or what they're about, I have no clue about the first three I just know the words, the names and the guilty but mentally I have no idea what it's about or nothing he tried to explain but like I said when they communicate it's hard for me to understand and it takes me a long time I'll read it over but also that, ..." Mr. Ramirez paused for a breath and then continued in a run-on fashion that he was told that doctors were going to be called to testify against him and that he was never notified and he was unable to call Dr. Maxann Shwartz in his defense. He also complained that he was unable to get a private investigator to call "plenty of witnesses" which affected his defense.

He also stated that he was a paranoid schizophrenic with paranoid delusions and hallucinations and never got sent for a ninety-day evaluation and was only evaluated for an hour or two, and "that's an improper evaluation in my opinion and I feel like I've been treated unfairly." Mr. Ramirez stated that "there was plenty of media this whole week" that the jury probably heard and "everybody's asking me all kinds of questions and I just say I don't know what's going on because I have no way to see newspapers or radio or anything." Mr. Ramirez continued,

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1 observations and opinions alone cannot trigger reasonable doubt about the defendant's
2 competency.").

3 (25) Here, defense counsel merely stated his beliefs that Defendant was not capable
4 of assisting in his own defense and that Defendant did not have the capacity to
5 determine whether or not to testify. In response, throughout the trial, the judge did
6 everything within his power, under the rules, to address the Defendant's concerns with
7 his physical condition and his inability to understand the proceedings, allowing a
8 nurse to examine him during the trial and consistently explaining to the Defendant
9 what was happening. Accordingly, the district court did not abuse its discretion in
10 denying Defendant's request for a forensic evaluation during trial because relying
11 only upon his own observations, defense counsel failed to substantiate his assertions.

12 (26) Further, had the district court found reasonable doubt as to Defendant's
13 competency to stand trial, Defendant would not have been entitled to a competency
14 evaluation after the commencement of trial. Once the jury is sworn, the Defendant's
15 only recourse is to request a jury instruction on the issue of competency. See Rule 5-
16 602(B)(2)(b). Defendant failed to preserve this issue by not submitting an instruction
17 on competency to the court or objecting to the instructions as offered. See *State v*
18 *Lujan*, 1975-NMSC-017, ¶¶ 8-9, 87 N.M. 400, 534 P.2d 1112 ("Defendant did not

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forestall testimony by one of the prosecution's expert witnesses (who was present in the courtroom during Mr. Ramirez's testimony). This may have been because the defense did not have any other expert witnesses at trial to testify. Not having expected that Mr. Ramirez's competency to stand trial would arise and having already foregone any defenses that would require expert testimony, defense counsel was simply attempting to keep the state from putting its witness on the stand for rebuttal. [RP 657-58. The proceedings are summarized in the tape logs, but were in chambers and not included on the audio CD in the record proper]

Mr. Ramirez also asserts that his counsel failed to call many witnesses he wished to have called, and also that he made promises to Mr. Ramirez if he testified that were not kept. These issues, however, are not reflected in the record. Matters not of record cannot be reviewed on appeal. *See State v. Martin*, 1984-NMSC-077, ¶ 28, 101 N.M. 595.

C. There was improper commentary on Mr. Ramirez's right to silence

This argument is made pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655. The review of a district court's denial of a mistrial is for an abuse of discretion. *State v. O'Neal*, 2008-NMCA-022, ¶ 28, 143 N.M. 437. The legal question



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1 (citation omitted). "Generally, only an evidentiary hearing can provide a court with
2 sufficient information to make an informed determination about the effectiveness of
3 counsel." *Id.*; see also *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d
4 776 ("A record on appeal that provides a basis for remanding to the trial court for an
5 evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such
6 claims are heard on petition for writ of habeas corpus . . ."); *State v. Telles*, 1999-
7 NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d 845 (stating that the "proper avenue of
8 relief [from ineffective assistance of counsel] is a post-conviction proceeding that can
9 develop a proper record").

10 (32) Though the district court repeatedly observed that defense counsel was
11 providing excellent representation to Defendant, the court did not hold an evidentiary
12 hearing. Therefore, the record before us is insufficient to establish that defense
13 counsel was ineffective or that the decisions made were a plausible trial tactic or
14 strategy. Accordingly, we reject this claim without prejudice to Defendant's ability
15 to bring such a claim via habeas corpus proceedings.

16 C. The district court did not abuse its discretion denying a mistrial based on
17 Deputy Loomis' commentary on Defendant's silence

18 (33) Defendant's third issue is that the court erred in denying his motion for a
19 mistrial based on an alleged improper comment about Defendant's silence after he had

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ST VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Exhibit 1 - per m

Time	Speaker	Note
3:54:07 PM	CHANDLER	GOING TO ASK FOR A RULING FROM THIS COURT IF DEFENSE IS GOING TO ALLOW SUR REBUTTAL
3:54:50 PM	COURT	YOU TAKE POSITION THAT HE IS PRECLUDED, THE COURT HAS LEE WAY
3:55:42 PM	COSBY	YOU ARE CALLING THEM ON REBUTTAL
3:56:04 PM	COURT	I DO NEED TO REMIND EVERYBODY THAT I EXCEPT PLEAS
3:56:17 PM	MORRIS	RESPONDS
3:56:36 PM	COSBY	THERE HAS BEEN NO DISCLOSURE, IF THEY CALL I WILL CALL MS SWARTZ ON SIR REBUTTAL, LAST FINDING I HAD HE WAS COMPETENT, I AM WITHDRAWING COMPETENCY, AND IF I
3:58:39 PM	COSBY	HE NEVER EXPRESSED ANY HATRED TO PLAN A MURDER
3:59:02 PM	CHANDLER	IF WE CALL OUR EXPERTS
3:59:11 PM	COURT	IT IS A MATTER OF JUSTICE
3:59:32 PM	COURT	WE ARE NOT IN THE KIND OF SITUATION WHERE YOU HAVE A SURPRISE
3:59:55 PM	CHANDLER	WE DID NOT DROP IT JUST NOW,
4:00:09 PM	COURT	THOSE REPORTS ARE AGED
4:01:04 PM	CHANDLER	WHAT HE IS DOING TODAY
4:01:23 PM	COSBY	WILL WITHDRAW COMPETENCY AND GUILTY BUT MENTALLY ILL
4:02:03 PM	CHANDLER	HE CAN WITHDRAW BUT HIS ARGUEMNTN HIS CLIENT IS SEEING THINGS AND HEARING THINGS
4:02:25 PM	COURT	IF WE TAKE THIS TESTIMONY AND TAKE WILL TAKE
4:03:14 PM	COSBY	MOTION AS FAR AS THE TWO COUNTS AND DOUBLE JEOPARDY ISSUES, IT WOULD BE A VIOLATION, IT WOULD BE ONE ACT OF TAMPERING WITH EVIDENCE, THE PHONE CALL WAS ATTEMPTING
4:05:00 PM	CHANDLER	THE MOTION THAT MR COSBY MADE
4:05:10 PM	COURT	THERE IS EVIDENCE, THAT THE PANTS AND GUN NOT FOUND WERE PLACED AT A DIFFERENCE PLACE, THE FACT THAT THE BRITCHES WERE FOUND AND NOT THE GUN DENIES THE MOTION
4:05:51 PM	CHANDLER	
4:05:59 PM	MORRIS	WHY DOES HE WANT TO RAISE SIR-REBUTTAL
4:06:31 PM	COSBY	SIR-REBUTTAL IS MATTERS
4:06:50 PM	CHANDLER	HE CHOSE NOT TO CALL WITNESS
4:07:21 PM	COURT	THE RULE AGAINST 90 DAYS, NOT PREPARED RIGHT NOW TO MAKE THE RULE
4:08:21 PM	CHANDLER	ALLOWS US TO PUT ON OUR REBUTTAL
4:08:49 PM	COURT	COMMENTS

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Exhibit 10

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relates that "for more than two decades, there has been the suggestion that mental health clinicians do not like patients with personality disorders..." and that "[t]hese attitudes may adversely affect delivery of health care provision and as such make it more difficult for patients with personality disorder and comorbid mental disorders to access and receive appropriate management for either disorder." Peter Tyrer, Ruger Mulder, et al, "Personality disorder: a new global perspective," World Psychiatry, Feb. 2010; 9(1):56-60, found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816919/>.

The two cases, *Flores* and Mr. Ramirez's, have a parallel structure: The defendant was found incompetent, sent to Las Vegas and hastily treated to competency, then sat in jail (possibly decompensating) for months on end while waiting on a trial date.

In summary, there was substantial evidence that Mr. Ramirez needed to have his competency to stand trial reevaluated. His case more than meets the bar set by *Flores* for a reevaluation. The desire to move his case should not have taken precedence over Mr. Ramirez's need for a reevaluation. The failure to have him reevaluated created a substantial risk that he was tried while incompetent to stand trial, the very risk that raising competency is supposed to ameliorate.

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EX-181-10
 Rule 5-602(B)(1) NMRA. Rule 5-602(B)(2)(b) states that if competency to stand trial is raised during trial, the jury "shall be instructed on the issue." In this case no such instruction was proffered or given.

An assertion of incompetency by defense counsel must be substantiated. *Flores*, 2005-NMCA-135, ¶ 20 (citation omitted). The evidence described above substantiates counsel's assertion. "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required..." *Drope*, 420 U.S. 162, 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181.

Mr. Ramirez's case can be distinguished from the recently issued decision of this Court in *State v. Solomon*, No. 33,975 (N.M. Sup. Ct. Aug 4, 2014) (non-precedential). In *Solomon* this court found that a District Court did not abuse its discretion by not ordering a mental health evaluation to see if the defendant was competent to stand trial. In *Solomon* the defense attorney never actually made a motion for a competency evaluation. *Id.* ¶ 12.

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deal with his outburst and attempt to fire his own attorney. Mr. Ramirez needed to be able to assist his attorney. *See State v. Rotherham*, 1996-NMSC-048, ¶ 13,122 N.M. 246. "Proper assistance encompasses more than merely providing information but is extended to the comportment in the courtroom before a jury." *U.S. v. Williams*, 113 F.3d 1155, 1160 (C.A.10 (N.M.) 1997) (citation and internal quotation marks omitted). As this brief lays out in the accounts of his testimony, Mr. Ramirez lacked the ability to comport himself during the trial. The judge, in a vast understatement, noted that Mr. Ramirez was difficult to represent. [10-10-13 CD B 2:07:30-2:41:36]

Earlier, outside the presence of the jury Mr. Ramirez complained that the trial was "not fair" because he wasn't being asked questions that he thought were necessary. He made allegations of having been sexually assaulted by a witness. [10-10-13 CD B 10:40:41-10:58:56] The judge himself stated that he had never seen a defendant act the way Mr. Ramirez was acting. [10-10-13 CD B 3:45:47-3:46:20]

Defense Counsel had asserted that Mr. Ramirez was incompetent and made a motion for a recess to allow for a reevaluation of his competency. "The issue of a defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings "

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1 representation, motions he wanted filed, and other issues he indicated that he would
2 present in his appeal.

3 (29) Defendant then demanded to be the first defense witness so he could
4 communicate his defense. During his direct examination, Defendant refused to
5 answer many questions directly saying he wanted to "explain everything." Defendant
6 then attempted to dismiss his counsel in front of the jury, forcing the court to remove
7 the Defendant and recess the trial. Later, after the parties rested, Defendant had
8 another outburst, complaining that he had a right to know what the jury instructions
9 would be so that he could file motions. The court told Defendant that he was being
10 well-represented and the instructions were fair.

11 (30) At Defendant's sentencing hearing, Defendant complained to the court that his
12 defense counsel had failed to effectively represent him and that he did not receive a
13 fair trial. Defendant argued that the jury would not have convicted him had it fully
14 understood that he was the victim. The district court assured Defendant that he had
15 received excellent representation and pronounced the sentence.

16 (31) "This Court has repeatedly stated that ineffective assistance of counsel claims
17 are best served through habeas corpus proceedings so that an evidentiary hearing can
18 take place on the record." *State v. King*, 2015-NMSC-030, ¶ 33, 357 P.3d 949

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1 competency by Dr. Fink in January 2013, Defendant spoke directly to the court,
2 though he was represented by counsel, and asked for a fifth forensic evaluation to
3 determine his competency. Defendant argued that a new evaluation would show he
4 was suffering from "psychosomatic delusions and hallucinations and severe
5 depression and anxiety." The judge listened to Defendant's request and then denied
6 it.

7 (17) This case is similar to *State v. Flores*, 2005-NMCA-135, 138 N.M. 636, 124
8 P.3d 1175. In *Flores*, the Court of Appeals addressed whether an unsupported
9 declaration against competency made prior to trial rose to the level of reasonable
10 doubt. In that case, just before trial, the defendant's counsel asked the court to find
11 that the defendant was incompetent to stand trial. *See id.* ¶ 7. The defendant's
12 counsel cited her own experience with the defendant as the basis of the request, stating
13 her belief that his condition had deteriorated because he had been held in isolation
14 since the competency hearing. *See id.* ¶ 8. The Court held that while "a court may
15 consider defense counsel's observations and opinions . . . those observations and
16 opinions alone cannot trigger reasonable doubt about the defendant's competency."
17 *Id.* ¶ 29. The Court also concluded that the testimony of experts is not required to
18 support a contention of incompetency, but "[i]nstead, a defendant could offer an

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1 offer an instruction on competence, nor did he object to the instructions given the jury.
2 Therefore, this issue was not properly preserved for appeal.”).

3 **B. Defendant did not receive ineffective assistance of counsel**

4 (27) Defendant’s second argument is that he was denied effective assistance of
5 counsel because defense counsel “lacked the necessary assistance of [Defendant]
6 himself”; failed to “seek the assistance of necessary experts,” and if more money was
7 required to seek such assistance on an urgent basis counsel should have requested it”
8 (citation omitted); and failed to obtain a reevaluation and attempted to withdraw the
9 motions to determine competency, resulting in prejudice to Defendant. Counsel has
10 abandoned the claims that trial counsel failed to call other witnesses or made promises
11 to the Defendant because these claims are unsupported by the record. As such, we
12 decline to review these claims.

13 (28) One week prior to trial, the district court denied Defendant’s motion to appoint
14 new counsel. Trial commenced as scheduled. On the fourth day of trial, defense
15 counsel informed the court of his decision not to call a witness on the record, as it was
16 against Defendant’s wishes. Defendant then addressed the court, against counsel’s
17 advice, about how his defense had been limited, how his mental illnesses affected him,
18 the amount of media his case was receiving, the quality of his attorney’s

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interview witnesses and other persons.

Contact was made with the 911 caller, Grace Finkey, who witnessed the incident, recognized the shooter, and contacted law enforcement. The victim, Eladio Robledo Valdez was pronounced deceased while at PRMC. According to the mother of the suspect, Albert has a large blue car, containing all his personal belongings. The vehicle was broken down in front of 511 E. 6th Street. Officers responded to the residence and observed the silver blue Cadillac parked on the street in front of the duplex. The vehicle contains a large amount of clothing and other personal items, possibly belonging to Albert Ramirez. The duplex at 511 E. 6th Street is currently vacant. The front window, facing north is open and raised approximately 8". The front and back doors are locked. The window on the east side of the building is unlocked with the screen removed. There are handprints on the exterior of the glass indicating that the window was pushed up to open the window. There are two cinderblocks under the window to provide easy entry into the window. The suspect, Albert Ramirez may be hiding within the vacant duplex to avoid detection and apprehension by law enforcement.

Based on this I believe that evidence relevant to the shooting may be within the residence or the vehicle described, and located at 511 E. 6th Street, Clovis, Curry County, New Mexico.

HEARAY CANT JUST SEARCH CAUSE WHAT HE BELIEVES, NO MATTER
IF HE'S A COP!!! might be good to try and find
whatever evidence found with the

Affiant is a full-time salaried, sworn Law Enforcement Officer currently employed with the Clovis Police Department. Affiant's current assignment is Detective with the Special Operations Unit, and member of the Major Crimes Unit.

warrant!

SUBSCRIBED AND SWORN TO BEFORE ME IN THE ABOVE NAMED COUNTY OF THE STATE OF NEW MEXICO,

THIS 12 DAY OF July, 2007.

Robert S. Oniz
JUDGE

Robert S. Oniz
TITLE

Robert S. Oniz
AFFIANT

Detective #98
TITLE

APPROVED BY ASSISTANT DISTRICT ATTORNEY

Matth Chen ON July 12, 2007

EXIBIT 11,

EXIBIT 11

EXHIBIT

page 8

44

RETURN AND INVENTORY

NINTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

STATE OF NEW MEXICO

-VS-

2007 JUL 13 PM 3:30

Albert Ramirez,

D.O.B. [REDACTED] 88

SSN: [REDACTED] 7793,

511 E. 6th Street, Clovis, Curry County, New Mexico,
and a silver blue Cadillac 4-door bearing Texas license W55HHS

D-0905- Subpoena - Deft
CLERK DISTRICT COURT

I received the attached Search Warrant on 07/12/07 And executed it on 07/12/07
at 2235 Hours. I searched the person or premises described in the Warrant and left a copy of the Warrant with

None present at scene

(name of the person searched or owner at the place of search)

Together with a copy of the inventory for the items seized. The following is an inventory of the property taken pursuant to the Warrant:

- 1 photo of suspect and unknown black male (Gang Writings)
- 1 paper with writing about shooting people
- 1 letter to Albert Ramirez denying his SSI benefits

This inventory was made in the presence of

Ricky M. Smith
Applicant for Search Warrant

and

Randy Pitcock
Owner or other witness


Signature of Officer or Detective

Randy Pitcock
Signature of Owner or Witness

Return made this _____ day of _____, 2007 at _____ hours.

(Judge Clerk)

After a careful search, I could not find at the place, or on the person described, the property described in this Warrant.

(Officer)

(Date)

EXHIBIT (u)

page 56

EX.B. + 11

Went
on you
thank?

EXHIBIT 11,

8th 49

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

NINTH JUDICIAL DISTRICT
CURRY COUNTY NM
FILED IN MY OFFICE

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,
D.O.B. [REDACTED] 88
SSN: [REDACTED] 793,

Deanna Spurt
CLERK DISTRICT COURT

D-8905- SW 8200 7 00 001

and a silver blue Cadillac 4-door bearing Texas license W55HHS

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being dully sworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, stenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED] Social Security Number [REDACTED] Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

EXHIBIT 11

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92P^{er}

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JUNE 13 2014

Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fornoff
CJN Projects Editor
rfornoff@cnyonline.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Eddie Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 18, waited outside the home the morning of July 12, 2007, with a loaded .22-caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head, execution style.

Chandler called the killing "premeditated, calculated and cold-blooded." He noted a pre-sentence report branded Ramirez a malingering who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good kid," Israel Ramirez told Hartley. "If I could switch places with him I would."



CJN staff photo: Robin Fornoff
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Eddie Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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Exhibit 12

31 page

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:06 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC.
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	COSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

10/10/2013

Exhibit 12,

3 of 5

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5/1 P-1
JUNE 13, 2014

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Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnston: CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Teddy Hanley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disturbed young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and asked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez's mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Debra Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez criminal case had been put on hold pending the outcome of the evaluations.

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Filed Under: News Tagged With: accused, Albert, competent, mother, old, ramirez, ruled, stand, suspect, trial

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JUNE 13, 2014

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson: Freedom Newspapers

A tip from a citizen led to the arrest of a Clovis teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W. 13th St. around 8:30 a.m. Sunday morning, a press release from Clovis police said.

He is accused of shooting Eladio Robledo, 39, multiple times in the front yard of 512 W. 6th St., a residence Robledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Curry County Adult Detention Center on a \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Robledo lying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Robledo with his hands outstretched toward the victim as if he was holding a gun and then saw multiple shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Robledo, who was bleeding from the head and unresponsive, the affidavit said.

Robledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Robledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Newsroom program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

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Calls to Debra Ramirez seeking comment were not returned Monday.



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JUNE 21, 2014

Teen charged with murder has competency issues

July 14, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Emilio Robledo in July 2007.

By Sharna Johnson: CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clovis 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Emilio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was laying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-dresspass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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JUL 10, 2013

Accused killer takes witness stand

October 10, 2013

By Robin Farnoff

CML PROJECTS EDITOR

rfarnoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of tying in wait and gunning down Eladio Robledo, 39, of Clovis, in July 2007, as he left his house on West Sixth Street for work.

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Mark Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.



Albert Ramirez
On trial for murder

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NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan

☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

1. I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
2. I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
3. I understand that there are limitations to treatment.
4. I understand that there are potential adverse outcomes to treatment.
5. I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
6. I understand that my treatment sessions will address my treatment goals.
7. I will complete assigned treatment homework (if any is assigned by my clinician).
8. Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)

#69597 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature Date

Beatrice Narciso, PhD, LPCC
Clinician (Printed/Typed Name)

B. Narciso, PhD, LAC 8/30/16
Clinician Signature Date

Eileen R. Missall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)

E. Missall 8/30/16
Reviewer Signature Date

Inmate Name Ramirez, AlbertoNMCD# 69597Facility CNMCF/MHTC

Treatment Plan

Form CD-180108.1 (Rev 06/16/14)

- 1) 3 choices Better Same or Worse
2) Take control one person 24/7 myself.
3) (RESPONSIBILITY)
Ability to respond rather than react.
(SELF-STRONG COPE)
10-15 min. immediately stopping from progress.

Monter illness is no excuse 4 bad behavior

I'm Sorry I take responsibility

in learning in ability to respond.

Thinking about was very inappropriate.
ONE goal to control one behavioral

I don't think impulsivity.
I should be charged
twice for the same. I don't mean it in an inappropriate
way in impulsive way.

That's what I'm looking
for in therapy.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Alberto J. RAMIREZ

Defendant-Petitioner,

S.Ct. No.

(leave blank, court will assign)

vs.

John Gay

District Ct. No.

(Name of Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

Alberto Ramirez
Defendant

Petitioner pro se

Alberto Ramirez
PO Box 1059
Santa Fe, NM 87501

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO... NM R CR Form 9-702

(address information)

PETITION FOR WRIT OF CERTIORARI TO THE
9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

10-10-2023 10:30 AM
 (your name v. Warden's name), District Court No. D 925-CR-2023-434
 5-16-79-20-7 filed on

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

- ① denying defendant his civil administrative right to effective assistance of counsel and compulsory process when his attorney refused to call DE Mervyn Swartz to testify at right compulsory hearing at trial
- ② whether previous criminal convictions were obtained in violation of the Federal Right to due process and a fair trial when prior convictions acts were introduced without a benching hearsay under Rule 11-411 F

- (B) Whether petitioner's communications were obtained in violation of his federal right to due process, and a fair trial when prior uncharged acts were introduced about a hairdryer, evidence under Rule 11-404B?
- (C) Whether Berg Struck during trial and jurors observed him and if denied him due process?
- (D) Sufficiency of Evidence?
- (E) Prosecutor Misconduct while prosecutor called defendant nurse to society and cross examined about doing legal research, to get jury to buy his story?
- (F) Double Jeopardy - charged twice for same time disposal of Shirts and gun, denied due process

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO... NM R CR Form 9-702

See original page 1 of 1

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

1st degree murder

2 counts of tampering with evidence

Life & fine six years

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

February 7th 2014 the supreme

court of New Mexico State of New

Mexico vs. Alberto Ramirez S. Ct. No

74,576 issued 10/18/17

3. Tell the story of what happened in your court case:

My attorney would not speak to

me, we had conflict of interest in

large trial and the motion for

change of venue even though extensive

media coverage

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO... WRC CR Form 9-702

I will not tell anything because
I was compelled to take Sheriff
Dee and me to say we I did not
fall in line anyway said IF I
Refuse to take plea he will not
proceed without me. 10/2/71
DEE attached page 4

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

POINT 1.

petitioner was denied his 6th Amendment right to Court-appointed assistance of counsel and his right to compulsory process when his attorney failed to call Monroe Swartz to rebut to state's mere assertions of malice and to testify \Rightarrow

1

prior had CTS evidence wrongly admitted,

Trial lawyer refused to call
MAYOR SWARTZ to raise
defense issue of capacity or
INSANITY.

Argument.

part 1.

petitioner was denied his 6th
amendment right to effective
assistance of counsel and his
right to compulsory process
when his attorney failed to
call MAYOR SWARTZ to rebut
to states MCL assertions of
manipulating and to testify at
trial about defendant's state of mind.
Is it ineffective assistance
to ignore a defendant's right to
compulsory process.

FORM 9-702. PETITION FOR WRIT OF HABEAS CORPUS TO... NM R CR Form 9-702

On the grounds stated above, the petitioner
 cross-examine to insure a just trial.
 (For further points?)

POINT 2:

Prior to the trial, the petitioner
 had been refused the introduction
 and this unfair trial was denied.
 The petitioner has right to a
 fair trial.

POINT 3:

The petitioner was likely prejudiced
 and denied his right to a fair trial
 when the full jury a direct result
 of being shunned and his attorney
 did not have jurors polled
 regarding whether they saw
 the shunners or not.
 See attached page 4 & 5 & 6

(Attach additional sheets, if necessary.)

REQUEST FOR RELIEF

4. Sufficiency of Evidence

Jackson v. Virginia 443 U.S.
307 - 317 (1979) did not
destroy or hide evidence

5. Prosecutor Misconduct.

State v. Sosa 2019 NMSC
056, 35, 147, NMBSI 223
P301, 348 called defendant

A menace to Society and committed
to doing illegal research to
Bear his charges.

6. Double Jeopardy

State v. Degraff
2006, NMSC, 011, 34, 139 NM
20, 131 P3d 61.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NMRA CR Form 9-702

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

(W) remand to the district court for a full hearing on the petition, OR

(W) reverse the conviction, OR

(W) remand to the district court to correct the sentence, OR

(W) (other) certiorari hearing or summary review
grant full habeas relief

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

(W) a copy of my petition for writ of habeas corpus filed in district court, AND

(W) a copy of the state's response, if one was filed, AND

(W) a copy of the district court's order.

(W) I have not attached the required documents because

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Antonio Ramirez

Defendant-Petitioner, pro se

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 25th day of Jan 25th 19

Antonio Ramirez PO Box 1508
Defendant-Petitioner, pro se Santa Fe 87504

Credits

[Adopted effective Dec. 31, 2014.]

Date 08/23/2019

New Mexico Corrections Department
Inmate Trust Accounting
Account Transaction History
From 02/01/2019 To 08/23/2019

Page 1 of 3
gail073

Offender Name	NMCD # Account Description 1		Account Number	
RAMIREZ, ALBERTO JOSE	69597 INMATE REGULAR SPENDING		43566	
Transaction ID	Date	Description	Amount	Balance
	02/01/2019	Beginning Balance		3,126 77
2941044	02/04/2019	PNM-MP3 ORDERS (ACCESS)	-155 35	2,971 42
2941331	02/05/2019	PNM-POSTAGE	-26	2,969 16
2944064	02/07/2019	Commissary Purchase, Invoice 132078	-84 01	2,885 15
2950959	02/15/2019	Commissary Purchase, Invoice 132646	-16 41	2,868 74
2952684	02/15/2019	Cash Receipt - RAMIREZ JOSE	200 00	3 068 74
2954928	02/18/2019	Commissary Return, Invoice 130009	98 93	3,167 67
2955541	02/20/2019	Commissary Purchase, Invoice 133065	-39 32	3,128 35
2956120	02/26/2019	Commissary Purchase, Invoice 549511	-359 29	2,769 06
2956218	02/26/2019	PNM-MISC- COPIES AND OR NOTARY	-104 00	2 665 06
2956836	03/01/2019	PNM-MP3 ORDERS (ACCESS)	-200 00	2 465 06
2957215	03/04/2019	Commissary Purchase, Invoice 550098	-159 43	2 305 63
2958127	03/07/2019	LCCF POSTAGE	-8 30	2 297 33
2961682	03/11/2019	Commissary Purchase, Invoice 550794	-34 54	2,262 79
2965242	03/13/2019	Cash Receipt RAMIREZ JOSE	200 00	2 462 79
2970848	03/19/2019	Commissary Purchase Invoice 551635	-105 65	2,357 14
2970918	03/19/2019	LCCF POSTAGE	-1 90	2 355 24
2971111	03/19/2019	Cash Receipt - RAMIREZ, JOSE	30 00	2,385 24
2971920	03/25/2019	Commissary Purchase Invoice 552598	-127 31	2,257 93
2973004	04/01/2019	Commissary Purchase, Invoice 553320	-65 42	2,191 51
2974990	04/08/2019	LCCF COPIES	-7 35	2,184 16
2979843	04/11/2019	Check 747932 - RAMIREZ, HESIGUIA	-300 00	1,884 16
2979977	04/11/2019	LCCF SECURITY PAY MA - LCCF POD DETAIL	10 50	1,894 66
2980352	04/11/2019	AUTOMATIC CVR DEDUCTION	-1 58	1,893 08
2980353	04/11/2019	Automatic Savings Deduction	- 53	1,892 55
2986113	04/16/2019	Commissary Purchase, Invoice 554776	-169 43	1,723 12
2987627	04/22/2019	Commissary Purchase, Invoice 555662	-62 07	1,661 05
2987841	04/23/2019	LCCF TOTE	-8 00	1,653 05
2988229	04/25/2019	LCCF CANTEEN CREDITS	8 40	1 661 45
2988574	04/29/2019	Commissary Purchase Invoice 5565C2	-30 40	1 631 05
2989573	05/06/2019	Cash Receipt - RAMIREZ DEBRA	150 00	1,781 05
2989638	05/06/2019	Commissary Purchase, Invoice 556990	-52 75	1,728 30
2992472	05/13/2019	Cash Receipt - RAMIREZ JOSE	100 00	1,828 30
2997820	05/15/2019	Commissary Purchase Invoice 557733	-146 50	1,681 80

Date 08/23/2019

New Mexico Corrections Department
Inmate Trust Accounting
Account Transaction History
From 02/01/2019 To 08/23/2019

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guyt073

Offender Name	NMCD # Account Description		Account Number	
RAMIREZ, ALBERTO JOSE	69597 INMATE REGULAR SPENDING		43566	
Transaction ID	Date	Description	Amount	Balance
3001704	05/16/2019	LCCF APRIL PAY - LCCF POD DETAIL	9 50	1,691 30
3002048	05/16/2019	AUTOMATIC CVR DEDUCTION	-1 43	1,689 87
3002049	05/16/2019	Automatic Savings Deduction	48	1,689 39
3003171	05/20/2019	Cash Receipt - RAMIREZ DEBRA	150.00	1,839 39
3003540	05/21/2019	Commissary Purchase, Invoice 558632	-146.59	1 692 80
3004822	05/28/2019	Commissary Purchase, Invoice 559560	-130 96	1,561 84
3004838	05/28/2019	PNM-REFUND FOR ALBERTO RAMIREZ #69597 MP3 ORDER	5 36	1,567 20
3005435	05/30/2019	Check 748165 - RAMIREZ HESIGUIA	-550 00	1,017 20
3005715	06/03/2019	Commissary Purchase, Invoice 560248	-68 30	948 90
3006724	06/06/2019	Check 748187 - RAMIREZ HESIGUIA	-250 00	698 90
3006820	06/06/2019	LCCF MAY PAY PROGRAM - LCCF QUILT TECH 1	46.00	744 90
3007126	06/06/2019	AUTOMATIC CVR DEDUCTION	-6 90	738 00
3007127	06/06/2019	Automatic Savings Deduction	-2 30	735 70
3008654	06/09/2019	LCCF COPIES	-5 00	730 70
3011766	06/12/2019	Commissary Purchase, Invoice 560796	-90 32	640 38
3016325	06/14/2019	LCCF CANTEEN CREDITS	4 81	645 19
3017674	06/14/2019	Check 748210 - RAMIREZ HESIGUIA	-250 00	395 19
3017789	06/14/2019	LCCF POSTAGE (16 80 + 3 66)	-20 26	374 93
3018483	06/17/2019	Commissary Purchase, Invoice 561666	-74 20	300 73
3019742	06/20/2019	Void Check 748165 - RAMIREZ, HESIGUIA	550 00	850 73
3019743	06/20/2019	Void Check 748210 - RAMIREZ, HESIGUIA	250 00	1,100 73
3020783	06/25/2019	Commissary Purchase, Invoice 562641	-99 33	1,001 40
3022029	07/01/2019	Commissary Purchase, Invoice 563250	-105 94	895 46
3022691	07/03/2019	Check 748294 - ACOSTA, ALFREDO	-850 00	45 46
3023219	07/05/2019	LCCF PROGRAMS JUNE P - LCCF QUILT TECH 1	42 00	87 46
3023488	07/05/2019	AUTOMATIC CVR DEDUCTION	-6 30	81 16
3023489	07/05/2019	Automatic Savings Deduction	-2 10	79 06
3025048	07/08/2019	Commissary Purchase, Invoice 563964	-76 35	2 71
3036099	07/17/2019	LCCF POSTAGE	-2 20	51
3037095	07/23/2019	Commissary Purchase, Invoice 565707	-31	20
3037988	07/29/2019	Cash Receipt - RAMIREZ DEBRA	100 00	100 20
3038649	08/01/2019	LCCF POSTAGE	-1 90	98 30
3040921	08/07/2019	LCCF PROGRAMS JULY P - LCCF QUILT TECH 1	44 00	142 30

Date 08/23/2019

New Mexico Corrections Department
 Inmate Trust Accounting
Account Transaction History
 From 02/01/2019 To 08/23/2019

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 gay#073

Offender Name	NMCD #	Account Description	Account Number	
RAMIREZ, ALBERTO JOSE	69597	INMATE REGULAR SPENDING	43566	
Transaction ID	Date	Description	Amount	Balance
3041201	08/07/2019	AUTOMATIC CVR DEDUCTION	-6 60	135 70
3041202	08/07/2019	Automatic Savings Deduction	-2 20	133 50
3052616	08/19/2019	Commissary Purchase, Invoice 568385	-26 34	107 16
3053181	08/21/2019	Cash Receipt - RAMIREZ, DEBRA	150 00	257 16
3053181	08/21/2019	Cash Receipt - RAMIREZ, JOSE	100 00	357 16
	08/23/2019	Ending Balance		357 16

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EXHIBIT 11,

8th 49

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

NORTH JUDICIAL DISTRICT
CURRY COUNTY, NM
FILED IN MY OFFICE

2007 JUL 13 PM 3:30

STATE OF NEW MEXICO

-VS-

Albert Ramirez,

D.O.B. [REDACTED]

SSN: [REDACTED] 7793,

511 E. 6th Street, Clovis, Curry County, New Mexico,
and a silver blue Cadillac 4-door bearing Texas license W55HHS

Deanna Skurt
CLERK DISTRICT COURT

D-0905- SW 0200 7 00 001

AFFIDAVIT FOR SEARCH WARRANT

I, Ricky M. Smith, being duly sworn, on my oath, state that I have reason to believe that on the premises described below, and/or on the person described above:

Residence located at 511 E. 6th Street, Clovis Curry County, New Mexico. Residence is tan stucco with white trim, single story, multi-family dwelling that sits on the south side of East 6th Street facing north, and between Wallace Street and Sheldon Street. The residence is identified with 511 E. 6th Street on a white mailbox, stenciled in black letters. The residence has white trim, with a tan composite roof. The front door is a glass and white metal screen door that faces north. The vehicle is parked on the street in front of the residence.

IN THE STATE OF NEW MEXICO, COUNY OF CURRY THERE IS NOW BEING CONCEALED CERTAIN PROPERTY, NAMELY:

Firearms, rifles, shotguns, or pistols, ammunition for firearms, and projectiles and missiles that may have been discharged from a firearm. Blood, blood spatter, other genetic material including saliva or other secretions. Other evidence to include fingerprints, skin, hair, and fibers. Clothing, bloodied clothing, to include shoes, shoeprints, trousers, shirts, undershirts, underwear, and socks, and bloodied towels or other cloth.

Albert Ramirez, Date of Birth: [REDACTED], Social Security Number [REDACTED] 7793, Hispanic male, Approximately 5'5" tall, 120 lbs., black hair, brown eyes

The items listed above have been obtained or are being possessed in a manner which constitutes a criminal offense, are designed or intended for use or which have been used as a means of committing a criminal offense, and would be material evidence in a criminal prosecution. The facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

On Thursday, July 12, 2007, at about 1339 hours, Officers of the Clovis Police Department were dispatched to the area of 515 W. 6th Street, in Clovis, Curry County, New Mexico, in reference to a 911 call for shots fired. The caller also relayed that there was a subject on the ground and that the suspect in the shooting had run off on foot to the north using the alley. Officers arrived on scene, noted the male body on the ground. The subject on the ground was subsequently identified as Eladio Robledo Valdez. The officers checked the area for the suspect, identified as Albert Ramirez, a Hispanic male, wearing a white shirt and blue jean shorts. The victim, who resides at 512 W. 6th Street, was on the ground in front of the residence. According to preliminary information provided by the caller, the victim had been shot by the suspect, fallen to the ground, and been shot again. Ambulance personnel arrived and the victim was transported to Plains Regional Medical Center Emergency Room. The scene was secured.

The Major Crimes Unit was activated. Investigators were dispatched to the crime scene at the 512 W. 6th Street and other Investigators were dispatched to the Special Operations Unit of the Clovis Police Department to

EXHIBIT 11

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AUTOFINDER

JUNE 13, 2014

Albert Ramirez sentenced to life in murder of mother's boyfriend

January 8, 2014

By Robin Fornell
CJN Projects Editor
rfornell@cnjournal.com

A sobbing Albert Ramirez pleaded for sympathy Wednesday at his sentencing for the 2007 murder of his mother's boyfriend.

District Judge Teddy Hartley responded: "It would be wrong for you to live in society," and gave Ramirez life plus six years in prison for what District Attorney Matt Chandler called the cold-blooded killing of 39-year-old Eddie Robledo of Clovis.

"You take your life now and do the best you can under the circumstances," Hartley told Ramirez. "I wish you luck."

Ramirez was convicted by jury in October after a week-long trial peppered by his repeated outbursts, forcing Hartley to remove him from the courtroom at one point. Ramirez claimed he was ill, that he couldn't comprehend what was happening and he wanted to fire his court-appointed attorney Jesse Cosby of Roswell.

As he did at trial, Hartley praised Cosby for "conducting trial perfectly" under circumstances Ramirez made difficult.

Chandler reminded Hartley before sentencing that evidence at trial showed Ramirez planned the murder of Robledo. It was retaliation for Robledo and Ramirez's mother obtaining a court order to force Ramirez out of their home, he said.

Chandler said Ramirez, then 18, waited outside the home the morning of July 12, 2007, with a loaded .22 caliber pistol. Robledo was confronted outside by Ramirez. There was a fight that left a blood trail from a garage at the rear of the house to the front sidewalk, where witnesses testified they saw Ramirez standing over Robledo firing the gun at his head execution style.

Chandler called the killing "premeditated, calculated and cold blooded." He noted a pre-sentence report branded Ramirez a malingering who blamed the system, his attorney, the police, the district attorney and the courts for problems he alone created.

At one point Ramirez's older brother, Israel Ramirez, awaiting trial on multiple felony charges unrelated to the case, was led into the courtroom in shackles and a bright orange jail jumpsuit to plead for a lighter sentence for "my little brother."

"He's a good kid," Israel Ramirez told Hartley. "If I could switch places with him I would."



CJN staff photo: Robin Fornell
Albert Ramirez, 25, of Clovis looks over the courtroom Wednesday while awaiting sentencing for the 2007 murder of his mother's boyfriend, Eddie Robledo. District Judge Teddy Hartley gave Ramirez the maximum sentence of life plus six years in prison.

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Humidity: 60%

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31 page

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Note
10:58:56 AM	CHANDLER	ON XEX GONNA ASK THIS COURT FOR ABOUT 10 OR 15 MINUTES WOULD LIKE TO DISCUSS WITH CO COUNSEL, SAID HE HAS NOT TESTIFIED BEFORE, I RENEW MY
11:00:15 AM	COSBY	IT WAS NOT A JURY TRIAL IT WAS A BENCH TRIAL, HE BATTERED A TRANSPORT OFFICER
11:01:15 AM	COURT	IF XEX TRIGGERS I WILL CHANGE MY RULING
11:01:44 AM	RECESS	
3:44:08 PM		COURT IN SESSION OUTSIDE PRESENCE OF JURY, DFT AND ALL PARTIES PRESENT
3:44:27 PM	CHANDLER	DEFENSE HAS RESTED AND HAVE GIVEN US A COUPLE OF INSTRUCTIONS GUILTY BUT MENTALLY ILL, HE IS ATTEMPTING TO RAISE COMPETENCY, OUR REBUTTAL WITNESSES ARE GOING TO TESTIFY THAT THEY HAVE EXAMINED THE DFT, ETC
3:45:47 PM	COURT	HAVE NOT SEEN A DFT THE WAY THIS TRIAL HAS UNFOLDED
3:46:20 PM	CHANDLER	WE HAVE CASELAW
3:46:30 PM	GOSBY	I AM NOT GOING TO SUBMIT A COMPETENCY INSTRUCTION,
3:46:46 PM	CHANDLER	WE ARE NOT OBJECTING, THE ONLY MENTAL ILLNESS THAT PROBABLY COULD HAVE BEEN TESTIFIED, DFT TOOK STAND AND HE DID NOT RAISE ISSUE
3:47:42 PM	COSBY	THE GBMI WAS AVAILABLE, BUT THAT DOES NOT DEPRIVE HIM OF THE RIGHT TO HAVE IT SUBMITTED, GBMI VERDICT IS NOT SOMETHING TO GIVE, HE IS ENTITLED WE HAVE TENDERED IT,
3:48:58 PM	COSBY	OPPOSES TO REBUTTAL WITNESSES BEING CALLED
3:49:17 PM	COURT	BASIS UPON
3:49:34 PM	MORRIS	THEY WERE CALLED, THEY ALSO CAN TESTIFY AS TO THEIR OPINION
3:50:52 PM		HE LISTED BOTH OF THESE DOCTORS, HE HAS NOT LISTED DR. SWARTZ
3:51:10 PM	CHANDLER	YOU CANNOT BRING IN AN EXPERT YOU HAVE NOT DISCLOSED
3:51:27 PM	COURT	AS A PRACTICAL MATTER WHAT YOU DO IN YOUR INSTRUCTIONS YOU HAVE A GUILTY AND GUILTY BUT MENTALLY ILL,
3:52:06 PM	COSBY	WE ARE NOT GOING TO ASK FOR SELF DEFENSE, WILL WITHDRAW BECAUSE OF MENTAL ILLNESS OR DEFECT
3:52:52 PM	OFF RECORD	

10/10/2013

EXHIBIT 12,

3 of 5

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JUNE 13, 2014

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AUTOFINDER

JUNE 13, 2014

Homicide suspect ruled competent enough to stand trial

September 17, 2008

By Sharna Johnson, CNJ staff writer

A judge ruled Tuesday 20-year-old Albert Ramirez, accused of shooting his mother's boyfriend in 2007, is competent to stand trial.

District Judge Trudy Herdley issued the ruling after hearing testimony Monday from a clinical psychologist with the New Mexico Department of Corrections who evaluated Ramirez.

No trial date has been set.

Dr. Joanne Burness told the court Ramirez is a "disordered young man" who likely has a mood disorder but is not mentally ill, court records showed.

She said Ramirez experiences hyperactivity, is easily angered and seeks sympathy, but that he understands and can assist in his defense, according to a transcript of the hearing.

Burness also told the court that during treatment, Ramirez inquired about how he could get his charges reduced and asked a lot during the three months he was there about the value of being found not competent.

Ramirez is charged with first-degree murder in the shooting death of 38-year-old Eraldo Robledo.

Police said Ramirez shot Robledo outside a Sixth Street home the victim shared with Ramirez' mother.

The subsequent investigation revealed a history of violence Ramirez directed at his mother and Robledo. Prior to the shooting, Delora Ramirez had filed no trespass orders against her son and told police she was afraid of him.

At the Monday hearing, defense attorney Brett Carter asked the judge to return Ramirez to Las Vegas for further treatment.

Carter argued that Ramirez was not tested thoroughly and that he does not believe he can assist in his defense.

Ramirez was transferred in June to the Behavioral Health Institute at Las Vegas, N.M., for treatment after he was declared dangerous and incompetent.

Ramirez' criminal case had been put on hold pending the outcome of the evaluations.

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Filed Under: News
Tagged With: accused, albert, competent, mother, old, ramirez, ruled, stand, suspect, trial



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Wind: 8 to 10 mph
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JUNE 13, 2014

Police arrest shooting suspect

July 16, 2007

By Sharna Johnson, Freedom Newspapers

A tip from a citizen led to the arrest of a Cleveland teen who police say shot and killed his mother's boyfriend Thursday, police said.

Albert Ramirez, 18, was arrested without incident at 713 W 13th St. around 4:30 a.m. Sunday morning, a press release from Cleveland police said.

He is accused of shooting Eladio Robledo, 39, multiple times in the front yard of 512 W 6th St., a residence Robledo shared with Ramirez' mother Debra Ramirez.

Ramirez is being held at the Cuyahoga County Jail on a \$100,000 bond, court records show.

Ramirez told police she was in the house and heard shots. When she looked outside, she saw her son running away carrying a handgun, an arrest affidavit filed in district court Monday said.

A neighbor across the street told investigators he heard three popping noises and went outside where he saw Robledo lying on the sidewalk "covering his head with his hands and yelling," the affidavit said.

The affidavit said the witness saw Ramirez standing over Robledo with his hands outstretched toward the victim as if he was holding a gun and then saw more shots were fired.

The man told police he went to call 911 and when he returned, Ramirez was gone. He tried to help Robledo, who was bleeding from the head and unresponsive, the affidavit said.

Robledo was pronounced dead at the hospital, the affidavit said.

Debra Ramirez told police her son made death threats against her and her boyfriend before, according to the affidavit.

June 22, about three weeks before the shooting, Albert Ramirez was placed on six months probation for smashing the windshield of Robledo's car March 31.

Ramirez admitted smashing the window out of anger, a police report said.

A judge ordered him to attend the next available session of the Alternative Sentencing Programs and Educational Network program, or ASPEN. Court records do not indicate if he had yet completed the program.

In a separate police report filed June 19, Debra Ramirez called police and told them her son smashed the front window of her home because she wouldn't let him in the house.

She said Ramirez was banging on the door and she didn't let him in because she was afraid he would hurt her, the report said.

Ramirez was not charged in the second incident, according to court records.

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Calls to Debra Ramirez seeking comment were not returned Monday.



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AUTOFINDER

JUNE 21 2014

Teen charged with murder has competency issues

July 14, 2008

Courtesy photo Ramirez is charged with first-degree murder in the shooting death of 39-year-old Eladio Robledo in July 2007.

By Shama Johnson, CNJ staff writer

A year after being charged in the shooting death of his mother's boyfriend, a Clove 19-year-old's case is on hold pending psychological treatment.

Albert Ramirez is being treated at the Behavioral Health Institute at Las Vegas, N.M., after being declared in April to be incompetent and dangerous. District Judge Ted Hartley made the ruling after reviewing the results of a forensic psychological evaluation.

Ramirez is charged with first-degree murder.

District Attorney Matt Chandler said examiners believe with treatment Ramirez could be brought to a level of competency to stand trial.

Court records do not specify the nature of Ramirez' competency issues.

He is accused of shooting 39-year-old Eladio Robledo in July 2007 outside a Sixth Street home the victim shared with Ramirez' mother.

Robledo died a short time later at the hospital from multiple gunshot wounds.

A witness told police he saw Ramirez shooting at Robledo, who was lying on the sidewalk.

Debra Ramirez told police she feared her son because of his violent tendencies and made him move out when he reached 18. She filed a no-trespass order against him about four months before the shooting, records show.

Debra Ramirez told police her son had been threatening her and told her, "something bad was going to happen and it was going to be her fault," according to a police report.

After the protection order was filed, Ramirez' mother reported her son broke a window at her home because she wouldn't let him in.

Police said Albert Ramirez also admitted on another occasion he broke the windshield of his mother's car because he "got mad."

Debra Ramirez could not be reached for comment.

According to the April order issued by Hartley, Ramirez is to undergo treatment for up to nine months until such point as he attains competency.

Chandler said a defendant is found incompetent to stand trial when it is determined they cannot assist in their own defense or understand the way the judicial system works or the proceedings.

In March, Ramirez was charged with two counts of battery on a peace officer.

According to an arrest affidavit filed in magistrate court, transport officers said they had to carry Ramirez into and out of the courtroom when he refused to walk during a court appearance. After

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AUTOFINDER

June 13, 2014

Accused killer takes witness stand

October 10, 2013

By Robin Fernoff

CMI PROJECTS EDITOR

rfernoff@cnjonline.com

Accused killer Albert Ramirez spent two hours on the witness stand — against his lawyer's advice — then was removed from the courtroom Thursday for his continued disruptions.

Ramirez took the witness stand for about two hours, telling jurors in rambling and sometimes tearful accounts that he was defending himself when he shot and killed his mother's boyfriend six years ago.

Ramirez is charged with first-degree murder, accused of lying in wait and gunning down Eudilio Robledo, 39, of Clovis, in July 2007, as he left his house on West Sixth Street for work.

Ramirez faces life in prison if convicted.

Ramirez continued his efforts that have peppered the trial since it began Monday, trying to speak to District Judge Teddy Hartley despite warnings from the judge and pleas from his defense attorney Jesse Cosby to stop.

Hartley gave Ramirez his final warning after District Attorney Matt Chandler ceased his cross examination and Cosby said he had no questions for redirect. Taking a seat next to Cosby, Ramirez said loud enough for the jury to hear, "Why didn't you ask me more questions?"

"If you don't quit talking," Hartley said, "I'm going to remove you."

Minutes later, Ramirez started talking again as his brother, defense witness Jose Ramirez took the stand. An exasperated Hartley pointed toward Ramirez and ordered sheriff's deputies to "take him out of this courtroom."

Two deputies grabbed Ramirez, who shouted "he's not asking questions ... he's not representing me," as the jury watched.

Until Thursday, Ramirez's disruptions came during periods when the jury was sequestered outside the courtroom. Cosby told Hartley he was now concerned the outburst planted seeds of doubt in the minds of jurors about his representation of Ramirez.

"He's fired me in open court in front of the jury," said Cosby.

Hartley, noting Cosby seemed to have a calming effect on Ramirez outside the proceedings, told him to talk to his client.

After about a 40-minute break, both sides returned and Cosby said Ramirez had decided to keep him as defense attorney. Hartley then warned Ramirez if there was one more outburst or disruption, he would have Ramirez removed and proceed with the defendant watching the rest of the trial in another room by video camera.



Albert Ramirez
On trial for murder

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EXHIBIT
13
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NEW MEXICO CORRECTIONS DEPARTMENT

Treatment Plan

☒ Individual ☐ Group ☐ RDAP ☐ Other SUDs

TREATMENT PLAN AND CONTRACT:

TREATMENT GOAL	Date goal set	TREATMENT Intervention and Frequency	Date Goal Met
Decrease symptoms of PTSD, i.e., flashbacks, nightmares, insomnia, numbness, sadness, anger, guilt, fear, etc.	8/30/16	Cognitive Behavioral Therapy at least one time per month in individual and/or group therapy to assist in identifying what triggers stressful memories and/or PTSD symptoms	
Increase coping skills to help deal more effectively with symptoms of PTSD	8/30/16	Assist in the development of positive coping skills at least one time per month in individual and/or group therapy.	
Reduction of the effects of traumatic memories on daily functioning.	8/30/16	CBT and/or Motivational Interviewing (MI) at least one time per month in individual and/or group therapy to assist in desensitization.	
Reduction of Intrusive Symptoms, i.e. intense or prolonged psychological distress or marked physiological reactions at/to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (s)	8/30/16	CBT, Motivational Interviewing (MI) and/or psychoanalytical therapy at least one time per month in individual therapy.	
Medication Compliance	8/30/16	Comply with medication prescribed by psychiatrist and cooperate with appropriate feedback, as indicated.	

CONTRACT:

- I will attend scheduled treatment sessions unless I have a mandatory institutional appointment.
- I will participate in the therapeutic process. There may be times when dealing with my issues may be uncomfortable or difficult.
- I understand that there are limitations to treatment.
- I understand that there are potential adverse outcomes to treatment.
- I understand that I can refuse to participate in any part of this treatment plan if it adversely impacts my safety, security, or health.
- I understand that my treatment sessions will address my treatment goals.
- I will complete assigned treatment homework (if any is assigned by my clinician).
- Other _____

By signing below, I am consenting to the treatment plan and contract:

Ramirez, Alberto
Inmate (Printed Name)

#64592 ALBERTO JOSE RAMIREZ 8/30/16
Inmate Signature Date

Beatrice Narciso, PhD, LPCC
Clinician (Printed/Typed Name)

B. Narciso, PhD, LPCC 8/30/16
Clinician Signature Date

Eileen R. Misall, MA, LPCC
Behavioral Health Reviewer (Printed/Typed Name)

E. Misall 8/30/16
Reviewer Signature Date

Inmate Name: Ramirez, AlbertoNMCD# 69597Facility: CNMCF/MHTC

Treatment Plan

Form CD-180108.1 (Rev 06/16/14)

- could manage
- 1) 3 choices Better Same or Worse
 - 2 Take control one person 24/7 myself.
 - 3) (RESPONSIBILITY) Ability to respond rather than react.
- 10-15 emotionally stopping from slips from progress.
- SELF-STEERING COPE

Mental illness is no excuse 4 bad behavior

I'm Sorry I take responsibility

in learning my ability to respond.

Thinking about was very inappropriate
ONE goal to control one behavioral

I don't think impulsivity.

I should be charged
twice for the same.

I didn't mean it in an inappropriate
way in impulsive way.

That's what I'm working
ON in therapy.

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

NMRA, Form 9-702

FORM 9-702. PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT FROM DENIAL OF HABEAS CORPUS

Currentness

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Alberto J. Ramirez

Defendant-Petitioner,

S.Ct. No.

(leave blank, court will assign)

vs.

John Jay

District Ct. No.

(Name of Warden)

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
11 DISTRICT COURT OF NEW MEXICO

Alberto Ramirez

Defendant

Petitioner pro se

Alberto Ramirez
per 804-1559
See 11-1-1501

FORM 5-702. PETITION FOR WRIT OF HABEAS CORPUS TO... NAB & CR Form 5-702

(
address information

PETITION FOR WRIT OF CERTIORARI TO THE
411 DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

_____ (your name v. Warden's name), District Court No. 7925 filed on 10-7-72

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

(A) denying defendant the right to effective assistance of
 counsel and compulsory process
 when his attorney refused to call
 Dr. Mervin Swartz to testify of
 child competency hearing at trial.
 (B) where post-trial criminal convictions
 were obtained in violation of the
 federal right to due process and a
 fair trial when pro-se legal argu-
 ments were introduced without
 a benching analysis under Rule 11.

- Ⓐ Whether petitioner's criminal convictions were obtained in violation of his federal right to due process, and a fair trial when prior uncharged acts were introduced about a hair-trigger analysis under Rule 11-4043?
- Ⓒ Whether Berg shackled during trial and jurors observed him and if it denied him due process?
- Ⓓ Sufficiency of evidence?
- Ⓔ Prosecutor misconduct while prosecutor called defendant merode to society and cross examined about doing legal research, to get jury to buy his story?
- Ⓕ Double Jeopardy - charged twice for same time disposal of Shrike and gun. denied due process.

FORM 9-702, PETITION FOR WRIT OF CERTIORARI TO..., NM R CR Form 9-702

See attached page 1 and 2

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

1st degree murder

2 counts of tampering with evidence

Life & fines six years

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

February 7th 2014 the supreme

court of New Mexico State of New

Mexico vs. Alvin K. Jones, Sr. NO

74,576 issued Jan 18th 2017

3. Tell the story of what happened in your court case:

My attorney would not speak to

me, we had conflict of interest in

large trial & no motion for

change of venue even though extensive

media coverage


 Joey D. Moya
IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

September 13, 2019

NO. S-1-SC-37887**ALBERT JOSE RAMIREZ,**

Petitioner,

v.

DWAYNE SANTISTEVAN, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the foregoing and being sufficiently advised, Justice Barbara J. Vigil, Justice Michael E. Vigil and Justice C. Shannon Bacon concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 13th day of September, 2019.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Zelda Abate

Clerk of the Supreme Court
of the State of New Mexico

By



Deputy Clerk

EXHIBIT

GG

AMENDED
PETITION

9-701. Petition for writ of habeas corpus.
[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

For Official Use Only
No. CR2007434
(To be supplied by the
clerk of the court)

Alberto Jose Ramirez
(Full name of prisoner)
Petitioner,

v. LEON MARTINEZ
(Name of warden, jailor or other person having
power to release the petitioner) Hector Balderas
Respondent.

CLERK DISTRICT COURT

2020 AUG 18 PM 2:01

NINTH JUDICIAL DISTRICT
CURRY COUNTY NM
FILED IN MY OFFICE

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. If more space is required, attach additional pages as needed. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. Alberto Jose Ramirez (name of person in custody) is imprisoned or otherwise restrained at penitentiary of New Mexico (name of facility and county of detention) by LEON MARTINEZ (name and title of person having custody).

2. This petition (SELECT ONLY ONE. If you wish to raise both types of claims, you must file two separate petitions and submit each petition in the location required by Rule 5-802(E)):

- ☒ seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, interpretation of the sentence by the institution or other matters relating to the trial or sentence the confined person received).
NOTE: If the petition seeks to vacate, set aside or correct the sentence or order of confinement, correct the Corrections Department's interpretation

EXHIBIT
HH

or application of the sentence or order of confinement, or challenge the conviction, it shall be filed in the county of the court in which the matter was adjudicated, or, if the matter has not been adjudicated, it must be filed in the county of the court that ordered the contested confinement. See Rule 5-802(E)(1) NMRA.)

- [] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole.)
NOTE: If the petition challenges conditions of confinement or matters other than challenges to the sentence or order of confinement (those set forth in the first option), it shall be filed in the county where the petitioner is confined or restrained. See Rule 5-802(E)(2) NMRA.

3. State concisely the facts upon which the confined person bases the claim:

SEE ATTACH PAGE. NOT ENOUGH SPACE TO WRITE IT ALL.
Irresponsible conflict of interest ineffective assistance of trial lawyer -
Shackles violation U.S. Constitution, State and Federal due process, improper comment on silence, prosecutorial misconduct, prior bad acts, challenge indictment, habeas attorney

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

STATE and Federal Right to due process 5th and 14th Amendment and violation of U.S. Constitution
SEE ATTACH PAGE 5 IT EXPLAINS THE GROUNDS LEGAL AUTHORITIES

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

YES ALL HAVE BEEN RAISED, EXCEPT COMMENT ON SILENCE FOR HABEAS ATTORNEY, GRAND JURY INDICTMENT INEFFECTIVE ASSISTANCE OF HABEAS ATTORNEY REVIEW

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

YES ALL DENIED DISMISSED, EXCEPT CHALLENGE GRAND JURY INDICTMENT, SILENCE AND COMMENTS ON SILENCE, INEFFECTIVE ASSISTANCE OF HABEAS ATTORNEY SHE DID NOT RAISE THEM I ASKED HER TO

7. Briefly describe the relief requested:

TO BE APPOINTED AN ATTORNEY TO ASSIST ME TO COMPLETE FOR ME TO DO ON MY OWN. EVIDENTIARY HEARINGS TO PRESENT WHAT JURY ACTUALLY SAW AND ALLEGATIONS TO BE PROVED.

- ① IRRECONCILABLE CONFLICT BETWEEN TRIAL COUNSEL AND DEFENDANT
COUNSEL - VERBALLY ABUSED and racist comments and threats to
NOT help if Mr. Ramirez did NOT take plea. 14th amendment.
- ② DEFENDANT SHACKLED in guilt phase of trial and fell down
SHERIFF SOCIETY MANIPULATED Mr. Ramirez to say he did NOT
FALL down. Mr. Ramirez told trial counsel this to avoid
THIS VIOLATED U.S. CONSTITUTION and State and Federal
Right to due process and Fair trial 14th amendment.
- ③ IMPROPER comment on silence detective stated he attempted
to interview MR. Ramirez. VIOLATION OF Right to remain silent
5th amendment protected by 14th amendment.
- ④ NUMEROUS Instances of prosecutorial misconduct. Comment
about doing legal research, ⑤ closing argument prior bad acts
saying MR. Ramirez head butted a police officer, broke windows
to show bad character amounted to misconduct, AKA
told jury was a liar, maniac to society with no proof
Right to Fair trial By 14th amendment.
- ⑤ prior Bad acts violated State and Federal Right to
due process and Fair trial protected by 14th amendment
- ⑥ Challenge of the grand jury indictment hearsay used
and NOT allowed in trial by jury. witnesses same as
stated I threatened to kill victim with hearsay. JUDGE
even vacated did not show up to trial and wrote
affidavit Recently all he said.
- ⑦ Double Jeopardy. See attach pages.
- ⑧ INEFFECTIVE assistance of HABEAS counsel Linnane
Kerr, ON. HABEAS collateral Review, she did not
argue ybd what I wanted and did not
take my opinion did it on her own. ONLY
had 30 days. she rushed to busy, she just
wanted to make quick \$5,000. NOT FAIR
ATR

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:
D-905-CR-2007-00434
 (b) docket number:
D-905-CR-2007-00434
 (c) name of judge:
Teddy L. HATISY
 (d) name and location of the court in which the proceeding was held:
700 N. Main St. 9th Judicial District Court

9. State the date of the final judgment, order or decree for confinement:

January 8th 2014

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

Life eligible parole after 30 years two 3 years
temporarily with evidence consecutive

11. Was the conviction the result of:

☐ Guilty plea
☐ No Contest plea (*nolo contendere*)
☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes
☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

Jesse R. Casby P.O. Box 6330 Roswell, NM 88201

14. Did you appeal your conviction?

☒ Yes (Go to 15)
☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

New Mexico Supreme Court

(b) The case name and docket number for each appeal:

ALBERTO RAMIREZ V. STATE OF NEW MEXICO
I don't know how to fill this out

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

Filed around August 2013

Decided December 1st 2013

4

(d) A summary of the grounds upon which each appeal was based:

Complicity, Command on Silence, shackles, prosecutorial
 misconduct, double jeopardy, prior bad acts

(e) The result of each appeal:

Denial

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG
 505 MARQUETTE NW
 ALBUQUERQUE NM 87102

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

Yes (Go to 18)
 No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

HABEAS CORPUS APPEAL AFTERMATH AMENDED PETITION
 by Liane E. Kerr denied.

(b) The name and date of each case:

NOT SURE. Alberto Ramirez v. S. German Franco

(c) The docket number:

NO - 1905 - CA - 2007 - 00434

(d) The court, the administrative agency, or institutional grievance committee from which relief was sought:

WARDEN FRANCO and 9th JUDICIAL COURT.

(e) The result of each proceeding. (Attach a copy of each decision.)

Denied

(f) The issues raised in each proceeding:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, prior bad acts, prosecutorial
 misconduct, complicity, double jeopardy, SHACKLES claim.

(g) State whether a hearing was held in connection with each of these proceedings:

DISPOSITION YES IM NOT SURE, BUT NO
 EVIDENTIARY HEARING.

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

YES. Liane E. Kerr. P.O. Box 10491
 Albuquerque, N.M. 87184-0491

5

19. Do you seek the appointment of counsel to represent you?²
☒ Yes
☐ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF SANTA FE

I, the undersigned, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. I affirm under penalty of perjury under the laws of the State of New Mexico that on August 18th, 2020 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th Judicial District Court (name of court)
Clavis (city), New Mexico, 88101 (zip code).

Alberto Ramirez
 (Signature)

PO Box 1059
 (Address)

Santa Fe, NM 87504
 PNM No., if applicable

USE NOTE

1. After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2. Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

[Adopted, effective August 1, 1989; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

Federal Habeas

10F6

7-11-20

(Affidavit) Evidence

The merits of the Factual dispute were Not resolved in the State hearing.

The State Factual determination is Not Fairly supported by the record as a whole.

The material Facts were Not adequately developed at the State court hearing for any reason it appears that the State trier of fact did Not afford the Habeas applicant Full and Fair Hearings.

The applicant was denied due process of law in the State court proceedings

SEE TOWNSEND V. SAIN 372 U.S. 293, 309 83 S.Ct. 745 9 L.Ed. 2d. 770 (1963)

TURN

SEE ANDERSON V. ATTORNEY GENERAL OF KANSAS, 425 F.3d, 853, 858 10th Cir 2005

• THE Factual Dispute is CLEAR TRIAL COURT ERRED IN NOT INQUIRING IF irreconcilable conflict Between lawyer and petitioner DISATISFACTION NO TRUST.

Actual prejudice resulting from that Failure or that a Fundamental miscarriage of justice would result from Failure to hold a Federal Evidentiary hearing

SEE. Keeney v. Tomayo - Reyes
504 U.S. 1, 11, 112 S.Ct. 1715
1118 L.Ed. 2d. 318 (1992)

SEE Daniels v. Woodford 428 F.3d.
1181, 1200 (9th Cir 2005)

SEE. ANDREW V. COLLINS, 21 F.3d 612
619 5th Cir 1994

What is adequate investigate lawyer hearing.

AT Disposition hearing Not allowed to Expend the record or testify.

MR Ramirez Did Not waive and abandon his claim that State Court violated his Sixth Amendment right to counsel by failing to rule on his motion requesting substitute counsel.

The district judge failed to conduct a sufficient inquiry regarding substitute of counsel to be sufficient. The trial court should question the attorney or defendant privately in depth. The did not here.

MR. Ramirez claims his trial attorney called him a stupid Mexican and to not get him effective assistance of counsel if he continued to insist on going to trial. Mr. Ramirez stated he would rather represent himself to avoid

Mr. Ramirez insist counsel said if he testified he could talk about being sexually abused.

Mr. Ramirez also asked trial counsel for motions counsel did not request as appellant asked for

turn

Motion For change OF Venue and
ther was plenty OF inaccurate
evidence OF prior death threats
and claims defendant attacked
victim ON other time inaccurately.

Mr. Ramirez ask trial counsel
to ask for motion For mistrial
the fact jury SEEN Him Fall
and Shacked and Sheriff
deceitly threatened Mr Ramirez
to say he did NOT Fall
Jury did NOT See him
Shacked manipulated by
Sheriff deceitly. Counsel
trial said NO to late.

HABEAS ATTORNEY LICKE E. KERR
DID NOT LET Mr. Ramirez
argue that is HABEAS.

was denied to expand Record
with Affidavit or speak at
disposition hearing

SEE CASE State V. Brawley

Cite as 137 A.3d 757

(CONN. 2016)

• MR. RAMIREZ STATES THAT TRIAL COUNSEL DID NOT KEEP HIM INFORMED ON THE PLEA DEALS, OR DISCUSS TRIED FOR TRIAL.

MR. RAMIREZ STATES HE EXPRESSED DISCONTENT AND DISTRUST AND CONCERN TO NO AVAIL.

MR. RAMIREZ CLAIMS HE WAS DENIED DUE PROCESS TO A FAIR TRIAL.

MR. RAMIREZ CLAIMS FEDERAL HABEAS ATTORNEY DID NOT FULLY MEET WITH MR. RAMIREZ TO PROPERLY ARGUE HIS ARGUMENTS AND ISSUES.

MR. RAMIREZ STATES HE TRIED TO DEVELOPE A RELATIONSHIP WITH HABEAS ATTORNEY AND TRIAL LAWYER TO NO AVAIL.

Mr. Ramirez States Trial
Counsel Stated he would
normally get 50,000 to 100,000
a case. It was a waste of
time.

Please I ask to Expord
the record with this
Evidence.

Thank you very much!

Sincerely

Alberto
Jose

Ramirez

09597

• SEE ground Four. I explained
this to ^{9th} district court and

N.M Supreme Court to NO

AUAIL. Please allow me to

Expord Record and get hearing.

THIS IS TO HELP PROPERLY PRESENT
Petition For HABEAS. TO Give the
State Courts opportunity to give
a decision OF MY State and Federal 14th
^{Amendment} Right to due process denied AND U.S.
Constitution violation by Jury seeing
SHACKLES ON MY leg and I Fell
down, and ~~IN~~ effective assistance
State and Federal both amendment right.
Denied. Also denied effective assistance
denied by post conviction HABEAS attorney
LIANE. E. KERR. Did Not Speak to me
she was so BUSY Ignored me. Did
Not present my Claims. OF Irrecon-
sible conflict resulted in denial OF
effective assistance of counsel at
trial. I am diligently trying
to show I've given court in
State chance to decide HABEAS
And prove my allegation
With Evidentiary hearing.

MOTION FOR TRIAL TRANSCRIPT
TO ASSIST IN FILING PETITION,
AND APPEAL, FACTS, AND EXHIBITS
TO HELP PROVE AND FURTHER MY
CLAIM OF INEFFECTIVE ASSISTANCE
OF COUNSEL. IN LIGHT OF ADDITIONAL
FACTS PRESENTED TO THE COURTS. IN
~~THE~~ AMENDED PETITION. ~~THE~~

MOTION FOR DISCOVERY TO ASSIST IN
INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL.

MOTION TO AMEND STATE HABEAS
PETITION. ON FACT FEDERAL RIGHT DUE
PROCESS VIOLATED BY FILLING AND JURY
SEIZING SHACKLES DURING TRIAL. AND
U.S. CONSTITUTION VIOLATIONS. AND
STATE DUE PROCESS VIOLATIONS.

• MOTION THE DISTRICT STATE COURT AND
N.M. SUPREME COURT A CHANCE TO ANSWER
VIOLATION OF DUE PROCESS STATE AND
FEDERAL, AND U.S. CONSTITUTION VIOLATION
ON SHACKLES AND INEFFECTIVE ASSISTANCE
OF TRIAL AND HABEAS ATTORNEY.

Motion for ~~IN~~ forma pauperis
to proceed Free of Payment
I AM INDIGENT PRISONER
MOTION For appointment of
COUNSEL

Motion For discretionary Review

Motion For COLLATERAL Review
to Exhaust ~~we~~hausted claims ^{advised}
and be allowed to properly present
claim of ineffective assistance of
COUNSEL on alleged claim of verbal
abuse + threats made by defense counsel

IN light of new additional
facts presented to the courts
~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~

ADD TO MY OWN RECORD
 FACTS -

TO: NEW MEXICO SUPREME COURT AND
 9TH JUDICIAL DISTRICT COURT, TO FEDERAL
 COURT AND TO 10TH CIRCUIT AND UNITED
 STATES SUPREME COURT. TO ALL COURTS:
 • TO WHOM IT MAY CONCERN.

- I HAVE HAD MY PETITION DISMISSED
 BY JUDGE DREW TATUM ~~DISMISSED~~
~~DISMISSED~~ ~~DISMISSED~~ ~~DISMISSED~~.
- I ~~DISMISSED~~ SENT ANOTHER PETITION
 TO THE COURT 9th DISTRICT, WITH MOTIONS
 TO AMEND, TO RECONSIDER, AND TO FIX
 MY PROBLEM OF NOT PROPERLY PRESENTING
 CLAIM AND IN LIGHT OF ADDITIONAL FACTS,
 EXHIBITS, FACTS NOT KNOWN. I HAVE
 RECEIVED NO REPLY FROM 9th DISTRICT COURT.
- I NOW ASK FOR TOLLING OF MY EXHAUSTED
 CLAIMS, DISMISSED CLAIMS, AND I AM
 PURSUING STATE COLLATERAL REVIEW ON
 UNEXHAUSTED AND DISMISSED CLAIMS.
- I AM PHYSICALLY DISABLED, CHRONIC
 HIP PAIN, GRIP, BACK NECK, SHOULDER
 PAIN, ALSO A BROKEN KNUCKLE ON RIGHT
 HAND. I AM MENTALLY ILL, PTSD, DEPRESSION,
 ANXIETY, AND PSYCHOSOMATIC DELUSION, AND
 SCHIZOPHRENIA.
- I AM TRYING TO EXHAUST MY CLAIMS
 AND NOT WANT TO MOVE FORWARD WITH
 CLAIM DISMISSED, APPOINTMENT OF COUNSEL
 DENIED, "I AM ASKING THAT COUNSEL
 BE APPOINTED, ON EVIDENTIARY HEARING,
 DISPOSITIONARY, BE GRANTED AND MY
 WRIT GRANTED."
- I DON'T WANT TO BE DECEIVED REQUESTS, AND
 PETITION DISMISSED, I AM NOT PROPERLY
 FILING PETITION, I AM NOT RECEIVING AND
 BE DENIED LEGAL ACCESS TO LAW LIBRARY AND
 BOOKS + FORMS AND COPIES, AND NO
 ASSISTANCE AT ALL.

- dismissing my petition, and denying my request for counsel would
 • This would create a miscarriage of justice by not granting my writ, my request for appointment of counsel, and my request for collateral review to exhaust, unexhausted claims, and to be allowed to properly present claim, on Alleged, Verbal Abuse and threats by counsel.
- FACT my defense counsel has died and I was prejudiced by his performance and having to be represented by force after I fired counsel in trial, and I ask to represent myself. I had continuously objected and expressed my dissatisfaction, and when I ask to speak on record, after I fired my attorney, every time I was denied NEVER there was no inquiry on the issue it was not looked into why I fired my defense counsel. or to represent myself.
- THE CONFLICT DEFENSE COUNSEL AND I had, counsel, IT WAS IRRECONCILABLE CONFLICT IT AFFECTED HIS PERFORMANCE my defense, counsel did not have my BEST INTEREST AT HEART. He told HIS I had my INTEREST. He was ANGRY.
- I WAS DENIED COUNSEL AT CRITICAL STAGE, BY HAVING NO INQUIRY, and to be represented by counsel who had stated to me, "You little stupid Bitch" and said "I HOPE YOU GET LIFE."
- I AM DOING LIFE PLUS 8 YRS OR 6 YRS. I did not know maximum and minimum time I was facing or I'd quit if convicted, counsel would not let me know, I fired I asked to NO AVAL.

● STATE CONCISELY THE FACTS UPON WHICH THE CONFUSED PERSON BASES THE CLAIM.

THE JUDGE IGNORED PETITIONERS REQUESTS FOR SUBSTITUTION OF COUNSEL AND DEMANDS TO FIRE HIS ATTORNEY. TWO WEEKS BEFORE TRIAL. TWICE IN TRIAL.

PETITIONER EXPRESSED DISATISFACTION, COMPLAINED OF COUNSEL NOT FILING MOTIONS FOR CHANGE OF VENUE.

WHEN THERE WAS INADEQUATE EVIDENCE OF MR. RAMIREZ ATTACKING THE VICTIM BEFORE INCIDENT. ALSO OTHER

HIGHLY PREJUDICIAL INADMISSIBLE EVIDENCE. OF MR. RAMIREZ BREAKING WINDOWS, AND ASSAULTING POLICE OFFICERS IN

SAME COMMUNITY OF CLOVIS, PETITIONER ALSO

COMPLAINED ABOUT BEING CONFUSED OF PROCEDURES AND COUNSEL NOT EXPLAINING PROCEDURES. MR. RAMIREZ

PETITIONER COMPLAINED OF A SERIOUS BREAKDOWN IN COMMUNICATION BETWEEN COUNSEL AND PETITIONER.

PETITIONER TRIED TO COMMUNICATE TO COUNSEL

TO NO AVAIL. COUNSEL FAILED TO ADVISE PETITIONER OF PLEA DEAL OR EXPLAIN THE MAXIMUM AND MINIMUM

TIME FACING. COUNSEL FAILED TO BE RESPECTFUL AND RESPONSIBLE AND FULFILL HIS DUTY OF LOYALTY TO

ADVOCATE TO PETITIONER BY NOT CALLING OTHER WITNESS PETITIONER WANTED CALLED AS WITNESSES.

COUNSEL THREATENED PETITIONER THAT IF

HE DID NOT TAKE PLEA AND KEEP ON INSISTING TO GO TO TRIAL HE WOULD NOT PROVIDE

EFFECTIVE ASSISTANCE OF COUNSEL.

PETITIONER TOLD COUNSEL AND PSYCHIATRIST AND FAMILY OF BEING SEXUALLY ABUSED BY VICTIM AS A YOUNG CHILD.

COUNSEL FAILED TO ALERT THE COURT THAT PETITIONER TOLD HIM HE FELL DOWN JULY SAW HIS SHACKLES AND HE FELL DOWN. AND THAT SHERIFF DECEITLY MANIPULATED ~~THE~~ THREATENED PETITIONER TO SAY HE DID NOT FALL DOWN AND THAT THE JURY DID NOT SEE HIS SHACKLES.

PETITIONER ASKED COUNSEL TO REQUEST A MISDEMEANOR AND TO PUT THIS ON RECORD.

COUNSEL REFUSED TO DO IT.

COUNSEL FAILED TO CALL WITNESS'S

PRICILLA LOPEZ NIBOR EYE WITNESS, AND RICKY JARAMILLO EYE WITNESS TO HELP PROVE I WAS THE ONE BEING CHASED AND I SHOT IN FEAR FOR MY LIFE I DID NOT CHASE VICTIM.

COUNSEL FAILED TO INVESTIGATE FAMILY HISTORY OF MENTAL ILLNESS IN FAMILY - AM TO DEFENSE.

PETITIONER CALLED COUNSEL AND WROTE TO HIM COUNSEL WOULD NOT SPEAK TO ME AT ALL AND IGNORED ME TO BUSY.

PAGE 12

COUNSEL PROMISED PETITIONER IF HE TESTIFIED PETITIONER WOULD BE ABLE TO TESTIFY OF BEING SEXUALLY ABUSED BY VICTIM AND NEIGHBOR EYE WITNESS SON SAIZ

COUNSEL FAILED TO CALL FATHER JOSE RAMIREZ WHO WOULD OF TESTIFIED VICTIM ATTACKED HIM TWICE AND WAS AGGRESSIVE, ALSO BROTHER ISRAEL RAMIREZ WAS ATTACKED BY VICTIM TO SHOW AGGRESSION.

COUNSEL KNEW I HAD BEEN DRINKING ALCOHOL DAY OF INCIDENT AND TOLD ME TO NOT TALK OF BEING DRUNK IT WOULD NOT HELP.

PETITIONER HAD SEVERAL WITNESSES HE WISHED TO CALL, TO PRESENT IN SUPPORT OF HIS DEFENSE AUNT, SISTER, BROTHERS, FRIENDS, DOCTORS WHO TREATED HIM AFTER ACCIDENT.

COUNSEL FAILED TO ALERT COURT TO IMPORTANT FACTS IN CRIMINAL CASE. PETITIONER WAS IN AN ACCIDENT IN 2007 WHEN BEGAN TAKING ANTIDEPRESSANT MEDICATION, & OTHER MEDICATION THIS BECAME SEVERE DEPRESSION, HE WAS UNABLE TO WALK ONLY WITH CRUTCHES, SUFFERED DELUSIONS HALLUCINATIONS. PTSD.

COUNSEL would not discuss trial strategy or anything.

COUNSEL told petitioner He hoped He got Life.

PETITIONER tried to speak on record twice to put this on Record but was denied.

PETITIONER Request that the court GRANT Him an attorney to assist him in HABEAS proceedings and to hold an Evidentiary Hearing on Ineffective Assistance of Counsel Because unfortunately all facts and allegations are not on the record to properly decide case.

Prosecutor used prior bad acts to show
character of propensity and it amounts
to prosecutorial misconduct

* Also prosecutor cross examination
on petitioner doing legal research
to beat his charges. then asked
right after you did legal research to
get the jury to buy this. ITS
A comment on petitioner's right
to assist in assist.

OTHER FACTS OF CASE

* Habeas counsel failed to discuss issues
petitioner wanted addressed, and argued
properly, 1st Habeas lawyer
Amara Stephenson refused to request
trial transcript of closing argument
Had case 6 months would not
request or file anything or discuss
case with petitioner,
2nd petitioner Liaw Kerr was
substituted because of conflict of
interest.

Habeas attorney rushed petition because
she was denied 60 day extension
request and did not meet fairly
with me. was too busy to
talk on phone.

STATE CONSIDERED THE FACTS UPON WHICH THE CONVICTED PERSON
BASES THE CLAIM.

* THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONER
PERMITS, DEMANDS TO FIRE OR SUBSTITUTE COUNSEL

- ① THERE WAS NO INQUIRY BY JUDGE
- ② NO CONSIDERATION OF LENGTH OF DELAY
- ③ THE EXTENT OF CONFLICT CREATED

OTHER FACTS

* WHETHER I BELIEVE PETITIONER'S CRIMINAL CONVICTIONS
WERE OBTAINED IN VIOLATION OF HIS STATE AND FEDERAL RIGHT
TO DUE PROCESS AND A FAIR TRIAL, WHEN PRIOR CHARGES
AND WITHHELD ACTS WERE INTRODUCED ABOUT A
BALANCING ANALYSIS UNDER RULE 11-404.B?

EVIDENCE IF HEAD BUTTER A POLICE OFFICER INADMISSIBLE
EVIDENCE IF LETTER EXIST NO WRITINGS OF
SHOWING PEOPLE TO PROVE ELEMENT OF PERMEATION

* FACTS

PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT
SAY MR. RUIZ PETITIONER IS A MENACE TO SOCIETY
AND ALIAR NO EVIDENCE TO PROVE THIS ITS
PROSECUTORIAL MISCONDUCT.

* ALSO CLOSING ARGUMENT EVIDENCE ON PRIOR BAD ACTS
ON INADMISSIBLE EVIDENCE OF BREAKING WINDOWS, HEARS
BUT BUTTER ON OFFICERS, AND DURING LEGAL RESEARCH IN
CLOSING ARGUMENT AFTER JUDGE TOLD HIM
TO NOT USE THIS EVIDENCE.

~~A Ground.
INEFFECTIVE ASSISTANCE
OF COUNSEL trial court
erroneously denying petitioner
NEW
THIS PAGE COUNSEL~~

~~INTENTIONALLY~~

~~LEFT~~

~~BLANK~~

PAGE 17

Ground ~~TOGETHER~~ PAGE 1
TOGETHER PAGE 1

TRIAL COUNSEL TOLD MR. RAMIREZ THAT HE WOULD NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL IF MR. RAMIREZ CONTINUED TO INSIST ON GOING TO TRIAL AND WOULD NOT TAKE THE PLEA. ALSO TRIAL COUNSEL DID NOT EXPLAIN THE MINIMUM AND MAXIMUM TIME MR. RAMIREZ WAS FACING. MR. RAMIREZ ALSO TRIED TO FIRE HIS ATTORNEY ONCE IN FRONT OF THE JURY IN MIDDLE OF TRIAL.

COMPLETE BREAKDOWN IN COMMUNICATION. THE DISTRICT COURT ABUSED ITS DISCRETION IN THE FACT THE JUDGE NEVER QUESTIONED THE TRIAL ATTORNEY OR MR. RAMIREZ PRIVATELY NOR IN DEPTH OF THE DISSATISFACTION AND OF THE COMPLAINANTS AND REQUEST TO CHANGE SUBSTITUTE COUNSEL.

ALSO. JUDGE COURT DID NOT INQUIRE INTO MR. RAMIREZ REQUEST.

Facts + transcript, newspaper clippings,
diary, to prove claim of
INEFFECTUOUSNESS COUNSEL

See Exhibit 1, 2, 3, 4, 5

MR. COSBY COUNSEL TRIAL DENIED
~~AND~~ AND FAILED TO PROVIDE EFFECTIVE
ASSISTANCE.

A WEEK BEFORE TRIAL
I ASK TO FIRE MY ATTORNEY.
DURING TRIAL IN COURT I
FIRED MY ATTORNEY. EACH TIME
THERE NO INQUIRE INTO WHY
I WAS EXPRESSING DISSATISFACTION
I WAS TOLD TWICE BY MR
COSBY BEFORE TRIAL STARTED
AND AFTER I TRIED TO FIRE
HIM IN COURT DURING TRIAL
COSBY STATED - I AM A LITTLE
STUPID BITCH AND ~~AND~~ MADE
THREATS, BY SAYING I HOPE
YOU GET LIFE, I ALREADY TOLD
YOU TO TAKE THE PUN OR YOU
WONT BE PROVIDED EFFECTIVE
ASSISTANCE OF COUNSEL.

I WAS NOT ABLE TO PUT THE
ALLEGATIONS ON RECORD.

BUT SEE EXHIBITS (10) page 1, 2, 3, 4, 5
(10) page 38-47

St v. A. Ramirez - CR07-434

COURTROOM ONE

Time	Speaker	Text
9:38:59 AM	DEF	I'M DISSATISFIED. THANK YOU FOR LETTING ME SPEAK. WANT TO ANNOUNCE THAT IF I COULD POSTPONE THE COURT, GET NEW ATTY. IF YOU WOULD BE WILLING TO, BUT IF NOT I WILL GO TO COURT WITH HIM. IF I LOOSE THIS CASE, DONT WANT HIM TO BE MAD AT ME OR LOOSE CASE FOR ME, ASKING FOR NEW ATTY. NOT DOING HIS DUTIES AS ATTY. THAT IS HOW I FEEL. I SAID IT AND I JUST FEEL HE MIGHT LOOSE THIS CASE FOR ANY REASON. I DONT HAVE A GOOD FEELING ABOUT GOING TO TRIAL. THANK YOU, THAT'S ALL I HAVE TO SAY.
9:40:29 AM	CT	ANY OTHER COMMENTS - NONE. LET ME ASSURE YOU OF SOME THINGS. FILE DEMONSTRATES THAT ATTY WOULD AND SHOULD DO IN YOUR CASE, HE IS A PROFESSIONAL AND WILL WORK AS HARD AS HE CAN. HE WONT BE MAD AT YOU FOR TRYING TO CHANGE LAWYERS. HE IS A SEASONED TRIAL LAWYER. CANT THINK ANYONE WHO WOULD DO YOU A BETTER JOB, YOU ARE AS WELL REPRESENTED AS YOU CAN BE. DONT WANT YOU TO BELIEVE YOU WONT GET A FAIR TRIAL. BASED ON THAT, COURT WONT SUBSTITUTE COUNSEL AT THIS JUNCTURE. GO TO TRIAL
9:41:52 AM	DEF	NO WAY I CAN POSTPONE COURT
9:42:00 AM	CT	THE FILE IS OLD AS YOU KNOW IT. DONT THINK WITNESSES WOULD BE SURPRISES. LEGITIMATE WITNESS WILL BE HERE FOR TRIAL. THAT WILL BE TAKEN CARE OF. DONT BLAME YOU FOR BEING CONCERNED
9:42:38 AM	DEF	ANY WAY THE DR CAN EXAMINE ME, FEEL I AM ILL. DONT FEEL YOU WANT TO GIVE ME A CHANCE
9:42:54 AM	CT	YOU HAVE BEEN EXAMINED. YOU HAVE COMPLAINTS, WE ALL HAVE THEM. THE COMPLAINTS YOU HAVE VOICED, AND DRS EXAMINED YOU SAY YOU ARE ABLE TO GO TO COURT. YOU ARE ABLE TO GO TO TRIAL AND ABLE TO PROCEED AND THAT IS WHAT WE WILL DO.
9:43:32 AM	DEF	NO WAY TO POSTPONE THE COURT
9:43:38 AM	CT	NO REASON TO DO THAT, ALL PREPARED. IT WILL BE ON MONDAY.
9:43:50 AM	DEF	THANK YOU TO COSBY, AND DA -
9:44:08 AM	CT	WHAT YOU GOT IS NOT THE WAY IT IS. SUPREME COURT HAS APPT ME TO THIS CASE.
9:44:24 AM	DEF	I WANT YOU ON THIS CASE, YOU KNOW WHAT I WAS GOING THROUGH.
9:44:37 AM	CT	I WAS THERE THAT WE HAD THE HEARING. THE PLEA. REMEMBER YOU WERE CRYING.
9:44:52 AM	DEF	ALWAYS BEEN REMORSEFUL. WHEN BRETT CARTER GAVE ME EXTRA YEARS. I'M SORRY I WITHDREW MY PLEA.

Page 2

See EXHIBIT
 page 47 page 13, 54, 55, 59, 54
 EXHIBIT 13

Page 2

I TRIED to address court my lawyer was
 not Filing ANY of my motions I ASKED him
 to, CHANGE OF VENUE, EVEN though there
 WAS PRE-TRIAL publicity concerning the
 case in small community of CUBS, NEW
 MEXICO. Some of this publicity inaccurately
 described Mr Ramirez as having attacked
 alleged victim on prior occasions, THE
 publicity WAS inaccurate and highly
 prejudicial and defense counsel should
 have at least raised the issue and
 requested a HEARING. SEE EXHIBIT, ~~2~~
 EXHIBIT 3

Counsel should have at least Filed a
 motion to suppress evidence that
 WAS illegally seized & inadmissible
 and highly prejudicial SEE EXHIBIT 11,
 or requested a HEARING ON this issue

SEE 11
 EXHIBIT
 PAGE
 48
 49
 50

COUNSEL did NOT provide me with all
 discovery, would NOT discuss WHO
 He was planning to call as witnesses
 And would NOT discuss intent to
 present the defense OF INSANITY
 COUNSEL did NOT file a Notice
 OF INTENT to present the defense
 EXHIBIT 1) page - 1, 2, 3, 4, 5

SEE 3
 PAGE
 3, 4

ST. VS ALBERT RAMIREZ CR-07-434

COURTROOM ONE

Time	Speaker	Notes
1:18:24 PM		JURY BEING SEATED IN BOX
1:19:33 PM		#7 WITNESS ROGER GRAU LT. WITH CLOVIS POLICE DEPT. CALLED BY MORRIS / SWORN / DEX
1:20:54 PM		THE MCU WAS ACTIVATED ON JULY 12TH, MADE SURE ALL THE PEOPLE WERE IN THE RIGHT POSITIONS, AND CRIME SCENE WAS BEING HANDLED
1:21:28 PM		SEARCH ITEMS OF CLOTHING IN THE BAG,
1:21:53 PM		WHAT WAS INSIDE THE BAG, "PAIR OF SHORTS" IDENTIFICATION OF DENIM SHORTS
1:23:40 PM		WHAT DID YOU FIND WHEN YOU SEARCHED SHORTS
1:24:57 PM		IDENTIFICATION EXHIBIT 62 "BAG OF BULLETS FROM PANTS POCKET"
1:25:39 PM		OFFERS EXHIBIT 62 / ADMITTED
1:27:48 PM		IDENTIFICATION EXHIBIT 63 "PIECE OF NEWSPAPER FOR HOUSES TO RENT THAT CAME FROM BACK POCKET OF JEANS / OFFERS / ADMITTED
1:28:21 PM		IDENTIFICATION EXHIBIT 64 "WALMART RECEIPT FROM HIS PANTS"
1:28:50 PM		WHAT IS THE DATE ON RECEIPT, WHAT WAS PURCHASED 22 CAL. AMMO
1:29:24 PM		OFFERS EXHIBIT 64 / ADMITTED
1:29:33 PM		IDENTIFICATION EXHIBIT 65 "NM ID CARD FOUND IN HIS POCKET"
1:29:59 PM		OFFERS EXHIBIT 65 / ADMITTED
1:30:08 PM		IDENTIFICATION EXHIBIT 66 "FOOTLOCKER RECEIPT"
1:30:56 PM		OFFERS EXHIBITS 66 / COSBY OBJECTS / COURT
1:31:31 PM		ARE YOU AWARE OF WHAT WAS ON THERE BEFORE
1:31:41 PM	COSBY	OBJECTS / COURT RECEIVES MEMORY IS SUFFICIENT
1:32:01 PM		IDENTIFICATION EXHIBIT 67 "FOOTLOCKER RECEIPT" OFFERS
1:32:34 PM	COSBY	OBJECTS / COURT UNDERSTANDS OBJECTION ADMITTED
1:34:30 PM		IDENTIFICATION EXHIBIT 68 "PHOTO OF CONTENTS" OFFERS
1:35:06 PM	COSBY	OBJECTS, TOOTHBRUSH NOT IN EVIDENCE" COURT OVERRULES / ADMITTED
1:37:08 PM		IDENTIFICATION OF EXHIBIT 69 "PHOTO OF SAME ITEMS"
1:37:45 PM		MOVES EXHIBIT 69 / SAME OBJECTION / ADMITTED
1:37:57 PM		IDENTIFICATION EXHIBIT 70 "PHOTO ID CARD" MOVES / ADMITTED

NOTED TO
EXHIBIT 62
2-10-19

30/5 being Credibility of Evidence not pit trial no
date on Receipt Prosecutorial Misconduct

- Sev →
- Left open IAC to be addressed in habeas
 - 1/18/2017- Mandate Affirmed
 - 3/22/2017- 1st Habeas Petition
 - 5/31/2017- Petition denied
 -
 - 6/20/17/- Current Habeas Petition
 - IAC of trial counsel and appellate counsel
 - Trial Counsel- Deceased. Jess Cosby. Petitioner tried to "fire" him before, during and after trial.
 - Trial counsel failed to file motions on his behalf: change of venue; motion to suppress evidence illegally seized (doesn't say what evidence).
 - Trial counsel withheld discovery from Petitioner. Did not discuss trial strategy or what witnesses intended to call. Failed to file notice of intent to present insanity defense.— Prior to murder charges, Petitioner was in an accident and taking numerous medications that could have affected him.
 - Failed to call witnesses- Aunt, Sister, Brother, Friends, and doctors who treated him after the accident.
 - Falling in front of Jury while wearing shackles. Case should be dismissed.
 - Failed to call Dr. Fink, Dr. Burness, Dr. Swartz to testify he had ~~been sexually abused by mom's boyfriend and neighbor Sam Saiz~~
 - Failed to call witness Pricilla Lopez to help self defense claim.
 - Failed to say he was on crutches.
 - Counsel verbally assaulted him and was not respectful.
 - IAC of Appellate counsel- failed to argue that TC failed to call numerous witnesses and present insanity defense. Failed to state he was not given a fair sentencing hearing. Failed to raise verbal assault from TC.... Wanted to represent himself.

Discovery:

- Jess Cosby was trial counsel. Deceased and have not located trial file.
- Copied discovery that was retained by Petitioner
- Received copy of record proper from Appellate Counsel Steve Forsberg
- Copy of BIC, Reply, Answer Brief, and memo opinion from Steve Forsberg
- Obtained Audio CD's from district Court
- ****Outstanding Discovery****- still have not been able to attain Mental Health Records/Prior evaluations. Evaluated by Maxanne Schwartz and NMBHI

MISC

- I have spoken with Albert numerous times. His main focus is on the shackle issue. I have tried to narrow down his other issues and discuss with him what they are (hard to read his handwriting at times). He repeatedly asks for extension on his case so he can "amend" the petition and get back to me on what those other issues may be. I have continued 2x in order to try and recreate a trial file. However, it appears the mental

ST. VS ALBERT RAMIREZ CR-07-434

CR1 CHAMBERS

Time	Speaker	Text
10:40:24 AM		COURT IN SESSION OUTSIDE PRESENCE OF JURY DFT AND ALL PARTIES PRESENT
10:40:41 AM	COSBY	HAS ONE OTHER ISSUE, MY CLIENT HAS TOLD ME THAT HE WAS SEXUALLY ASSAULTED ETC.
10:42:10 AM		HE WANTS TO TESTIFY THAT MR. ROBLEDO AS WELL AS MR. SAIZ SEXUALLY ASSAULTED HIM
10:42:28 AM	CHANDLER	THERE IS NOTHING THAT SUPPORTS THAT PARTICULAR CLAIM, IT HAS NEVER BEEN REPORTED, WHEN DID THE HAPPENED , IT IS THE TIMELINE,
10:43:36 AM	COSBY	UPON ON HIS FIRST STATEMENT, WHEN MY CLIENT FIRST WENT TO HIS HOUSE MY CLIENT TOLD HIM HE HAD BEEN SEXUALLY ASSAULTED.
10:44:17 AM	COURT	HERE IS THE PROBLEM WE RUN INTO, THE KIND OF THE TIMING, THE COURT IS OF THE OPINION THAT I WILL NOT ALLOW IT, THERE WAS NOTHING TO SUGGEST THAT IN HIS OPENING STATEMENT, IF THE STATE IS OF THE OPINION THAT WE CREATE AN ERROR BY EXCLUDING THIS, I WILL RULE AGAINST IT
10:45:42 AM	DFT	ABOUT THIS MATTER, THE REASON I DID NOT SAY ANYTHING IN MY OPENING STATEMENT
10:46:16 AM	COURT	YOUR ATTORNEY MR. COSBY IS DOING AN EXCELLENT JOB, I HAVE LET YOU TALK, THE PART I AM GOING TO RESTRICT THAT WE ARE NOT GOING TO GO INTO THIS AREA
10:47:12 AM	DFT	I DID NOT GET ASKED ABOUT BROKEN WINDOW, THIS IS MY LIFE , I FEEL LIKE I AM NOT HAVING A FAIR TRIAL, IF I DID NOT GET ASKED A QUESTION ABOUT SEXUAL ASSAULT
10:48:28 AM	DFT	I LET MAXINE SWARTZ THAT I WAS SEXUALLY ASSAULTED, ETC
10:49:17 AM		I TRIED TO EXPLAIN TO DR. FINK , IT IS NOT FAIR I THINK IT IS RELEVANT
10:49:47 AM	COSBY	THERE IS RECORD THAT HE DISCUSSED WITH PSYCHOLOGIST OF SEXUAL ASSAULT, THERE IS NO EVIDENCE BEFORE THE HOMICIDE
10:51:54 AM	COURT	WILL GIVE YOU FIVE MINUTES
10:52:21 AM	DFT	WHEN MR. COSBY STATED THAT I WAS MELINGERING , AND PSYCHOLOGIST BELIEVED ME, ABOUT FOSTER CARE I WAS EMBARRASSED MY MOTHER KNEW, EXPLAINS WHAT HAPPENED WITH ELADIO
10:54:59 AM		REGARDING SAM SAIZ HE USED TO GO OVER THERE WHEN HE WAS IN JUNIOR HIGH, ETC.
10:58:18 AM	COURT	I'VE GOT YOUR STORY, AFTER HEARING THE STORY IT IS NOT RELEVANT

10/10/2013

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Excerpts from Transcript



1 say and you're saying some more stuff right now that is on the record. The part that I'm gonna
2 restrict is that you're not gonna go into this area at this juncture in this trial.

3 AR: It's-it's, uh, relevant to the case and also I didn't get asked about how, about my schooling, like I
4 thought it was maybe it was important to the Jury about how I was doing in school and before
5 how this led up to it and I didn't get asked about why I broke the window to my mom's
6 boyfriend's car, what happened that day, who was there, I didn't get asked, um, several things ...

7 DT: See those are not relevant to the issue that we are here about.

8 AR: How come they've used it in court? He brought it up. The prosecution said I broke a window
9 but it's not relevant? It's relevant if the prosecution used it but I can't explain why it's relevant
10 Your Honor and you all a very educated man and I'm a nobody and I'm real low, uh, low IQ but
11 I guess in my life and I feel like I'm not having a fair trial because if-if I would have known that
12 I didn't have to get asked a question about me being sexually assaulted by my neighbor and
13 (inaudible) I would have just said it myself but I just had respect for the courts and for you for
14 Matthew telling everybody I wasn't gonna just throw it out there like that.

15 DT: You're-you're ...

16 AR: But I don't feel it's fair.

17 DT: You have, you've explained this issue and you've been through psychological evaluations and
18 we've had two for sure ...

19 AR: Okay.

20 DT: ... did you explain that to them?

21 AR: Yes. Yes sir. Another thing, thank you for letting me speak, I greatly appreciate it and God
22 bless you all. I've let Maxine Schwartz know that I was sexually assaulted. It's on record, she

25 New Mexico vs. Albert Ramirez
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Excerpts from Transcript

1 my defense but like I said in the past, I've asked to fire him, I've asked to get a new attorney
2 which I can't, I can't afford it I'm poor, I have no help from my family just basically to get my
3 hygiene and that's it and-and also I, um, I asked for a new attorney, I asked for a private
4 investigator, I asked for a neurologist evaluation, I asked for another competency evaluation, I
5 asked for several motions which I don't know if they were, they were even filed or if they were
6 denied, I've asked, uh, I don't know if Mr. Cosby I just feel like maybe I-I have a big mouth and
7 I sit to-to open my big mouth and say things and I don't know if I made him angry or upset or
8 frustrated or what I've done but for some reason I don't know if he's gonna lose this case
9 because it's a weak case or if it's intentionally or accidental or I'm just paranoid or ...

10 DT: Mr. Ramirez.

11 AR: ... but-but something Your Honor for that ...

12 DT: The issues that you wanted to be on the record you've listed them and I think you've listed them
13 well, uh, thank you for all the truth of the situations that-that you face, uh, and-and-and it's tough
14 to understand everything even if you're in the system, but I think that you've made a record ...

15 AR: Sorry Your Honor.

16 DT: ... and the Appellate Court will see that record and-and therefore that's-that's what you needed to
17 do and that's what you've done.

18 AR: Okay. Thank you Your Honor I had more, uh, uh, things to say but thank you for that time I'll-
19 I'll just say them on my appeals, I had more things that I wanted to say but thank you.

20 DT: Okay thank you sir. Alright (9:25:58)

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Excerpts from Transcript



1 knows. I've told her what happened by my neighbor, by my mom's boyfriend, I told Maxine
2 Schwartz that's why I was hurt that I didn't get to have that as my defense today and also ...

3 DT: And who is Maxine Schwartz.

4 JC: She's the one, uh, the original determination wasn't competent.

5 AR: And also ...

6 JC: Psychologist.

7 AR: ... Dr. Burness I'm not gonna say whether she asked me or not but like I said I was assaulted over
8 there and battered and they sent me back and found me competent which isn't, wasn't good, was
9 not prop-professional and also Dr. Fink I tried to explain this to Dr. Fink that I was sexually
10 assaulted and-and Dr. Fink stated well that doesn't have anything to do with your case. He said
11 your murdered somebody and that doesn't have nothing to do with your case and he said also he
12 said even if you were incompetent my job as working for the State of New Mexico is to find you
13 competent and whether you get to the hospital or not they're still gonna find you competent
14 because that's the job the State of New Mexico has and I said well I explained everything and I
15 was, I' not get, I'm not, it's not fair and I think it's relevant.

16 JC: Okay there is ...

17 AR: If your child was ever assaulted would you want ...

18 JC: Can-can we finish please? Go ahead but there is record that you discussed with psychologists
19 something about being sexually assaulted in the report and I hesitate to have to do this but in the
20 report the psychologist says that he's malingering and fabricating and that the allegations of
21 sexual abuse is I believe that her term, highly suspect. So it was brought up, it was discussed, it
22 was not, um, commented much upon except when the report that the person said because of his

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1 DT: It is highly suspect for sure in my opinion.

2 AR: I, uh ...

3 DT: And (inaudible) against you're done so say what you want to say.

4 AR: Okay. Mr. Cosby stated that supposedly a psychologist/psychiatrist stated that I was malingering
5 or they didn't believe me which in my opinion when he said that, which it went against me and
6 on the record, okay if there's a psychiatrist/psychologist, Maxine Schwartz which I told and she
7 believed me, um, that would be relevant and that would help my case which would make it
8 allegedly true and what he said about somebody saying that I was malingering makes me look
9 bad but why would he say that Dr. Maxine Schwartz believed me when I told her about the
10 sexual abuse and it makes me right. And also about foster care okay I never told nobody, I was
11 embarrassed. The only person I told was my mother and about this I was about, when
12 (inaudible) done this to me he would give me beers so I started drinking with him and then later
13 on I drunk a lot of beers with him, and, um, I was 16 it was the summer time and, uh, he, uh,
14 tried to kiss me and I told him no and, uh, he got in my face and he threatened to-to punch me, he
15 threatened to hit me and I-I didn't want to get hit, I was scared. So I said okay. Then, uh, he
16 forced me to give him oral sex which I did, which only lasted maybe 2 to 3 minutes at the most
17 and then it was done, it was right in the living room, I was sitting on the couch, he was standing
18 in right in front of me and I did it and he told me not to say nothing but I told my mom and my
19 mom asked him, he denied it. Well then later on about a month later he-he did it again and I
20 told my mom and she said, uh, she was gonna call the cops and-and, um, they got in an argument
21 and I guess he unplugged the phone and they were talking and then my mom sent me to my room

State of New Mexico vs. Albert Ramirez
Criminal Cause No. D-905-CR 2007-00434
Excerpts from Transcript

1 and then nothing ever happened. My mom just said I talked to him, I talked to him and-and that
2 was it.

3 DT: (inaudible)

4 AR: And-and-and she told me that she said that she told him that if I ever said anything about him
5 hitting me or any sexual abuse that she was gonna press charges and that I was gonna give, I was
6 gonna have to tell the police and stuff, well not about that, well about Sam Size. I used to go
7 over there because he used to call me over there and when I was between junior high I used to go
8 over there and I always used to like to drink and smoke weed so in order to get beer, I would go
9 to him and I just went over there and I would drink and, um, I would get a beer or two and he'd
10 give me a beer or two and he tried to, he tried to get with me. He just asked for a hug and then
11 he grabbed my, I can't remember if he grabbed my penis and my butt or both and he tried to put
12 his lips on mine, I told him no back up, you know, and I-I ran away with the, with the beer and
13 then I-I ended up going back one more time and, um, I needed some more beers cause I was with
14 my friends and it was Sunday, I don't remember the date, it was summer time, I was 16, he gave
15 me, I went and I said hey man I-I need some beers and, um, I don't remember exactly what was
16 said but I know he gave me like 7 to 8 beers and he tried the same thing on me and he touched up
17 on me and that's assault, he grabbed my penis and my butt and everything and he always tried to
18 invite me over there but I was scared of him. The reason I was scared of Sam Size to go over
19 there was because he told me when I was a little kid, do not, he told me he said, um, cause I used
20 to hang out at the other neighbor's house and he used to just give me beer free, he wouldn't try
21 nothing on me or anything, he just gave me beer for free, just to hang out, smoke and, uh, Sam
22 told me I don't like him, you shouldn't be hanging out with him because he's always talking crap

Page 30

Page 3

page 3

Exhibit 1, 3, 10 page 4, 10, 12, 13
page 47

Insanity, But Instead of advocating zealously on BEHALF OF MR. Ramirez's defense, COUNSEL INFORMED the COURT THAT HE WOULD NOT BE presenting expert psychiatrist, or physician, BECAUSE MR. Ramirez won't discuss the CASE with him and is unable to assist in the defense.

COUNSEL Failed to alert the court to important facts in arguing the CASE. MR. Ramirez was INJURED IN an accident in 2007 which he began taking anti-depressant medication, & other medications. This became severe depression as he was unable to walk, work, or drive, could only walk with crutches, suffered from psychosomatic delusions, hallucinations, ~~and~~ counsel did not present evidence of the medication MR. Ramirez was taking.

MR. Ramirez felt his lawyer was against him, SEE page 4, 10, 12, 13
Exhibit 1, 3, ~~and~~

page 37

SEE EXHIBIT 1, page 1-5
EXHIBIT 10, page 41

page 4

COUNSEL Failed to File any
WITNESS list WHATSOEVER IN
SUPPORT OF MR. RUIRIZ'S DEFENSE
OF INSANITY and lack of capacity

MR. RUIRIZ had several witnesses
He wished to present in support of
his defense, including his Aunt,
Sister, Brothers, Friends, and
doctors who treated him after
accident.

COUNSEL failed to show courts JENNIFER said went
I was to cooperative
MR. RUIRIZ asserts that he de. witness lied and I
received ineffective assistance of would not
COUNSEL for various reasons that cooperate
are, unfortunately, not on
record, because those matters
were not preserved in the record.

MR. RUIRIZ Request ~~that~~ that the
court grant him an attorney to
assist him in habeas proceedings
and to hold an evidentiary
HEARING. ON INEFFECTIVE OF
COUNSEL.

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page 5

EXHIBIT 1. 2:12 05 PM
 ↓ 10/10/2013

AFTER I FIRED COUNSEL IN TRIAL
 COUNSEL VERBALLY ASSAULTED ME I
 ADVISED COUNSEL. I DID FALL DOWN
 IN FRONT OF JURY BECAUSE OF
 THE SHACKLES ON MY LEG TIED TO
 THE TABLE. WHEN I WAS TOLD TO
 RISE, SHERIFF CALLED ME TO COURT
 I FELL, JURY SAW MY SHACKLES,
 WHILE MY LAWYER WENT TO TALK TO THE
 JUDGE THE JUDGE, THE SHERIFF
 DOUBTLY THREATENED ME AND TOLD
 ME TO SAY I DID NOT FALL.

I WAS ASKED BY JUDGE DID YOU
 FALL. I SAID YES THEN NO
 BECAUSE SHERIFF WAS GESTURING
 ME TO SAY NO. ONLY D.A.
 COULD SEE. SHE WAS SHACKLING
 HEAD & FINGER AND MOVING NO.

I TOLD MY LAWYER THIS AND
 ASK HIM WHY DON'T HE SAY
 IT TO THE COURT. ASK FOR MISFEASANCE. BUT
 HE SAID NO I ALREADY MADE
 UP MY MIND.

I ASKED TRIAL COUNSEL ^{ASK} FOR MISFEASANCE
 DUE TO JURY SEEING SHACKLES IN VIOLATION
 OF STATE AND FEDERAL RIGHT TO FAIR TRIAL
 AND VIOLATION OF U.S. CONSTITUTION
 See. Deak. U. Minson

INEFFECTIVE ASSISTANCE OF
COUNSEL

SEE THIS

Robledo weighed 175 pounds
IN THIS page EXHIBIT 2A
See Exhibit 2B.

He weighed 145 pounds
typo messed up. Accident

Could OF Argued THIS at
TRAC. 2

Service No 306316

Inci# 07-003238 Pt# 0001

OUT OF HOSPITAL CARE REPORT

Clovis Fire Department

Unit No. 24

Alarm Date 07/12/2007

FDID# 09013

Disposition

Transported to 9 PRMC/Clovis

M of Transport 1 Ground

by Tied With

Lights/Siren from Scene? Emergent, with lights or siren

Dest Determined by 06 Protocol

Diverted To

Patient Disposition 01 Treated, Transported by EMS

Pulse on Transfar 2 No

Insurance

Type	Policy #	Group #	Insured Name
------	----------	---------	--------------

Patient Narrative

Ambulance 1 arrived at 512 West 6th with a report of a subject on the ground. Ambulance 3, Bill Baca and myself arrived at the same time. Patient was lying with his head to the north on his left side in a pool of blood. Patient was placed on a LBS board, placed on the stretcher and taken to the ambulance where IV's, O2 and intubation was being prepared.

EMS Personnel was asked to gown up and get ready to transport code 3. K Burns prepared to intubate the patient. Ben Black was assisting with airway procedures, Chris Elam, Mike Nolen and J. Boyd, worked on IV's, Bill Baca was hooking up the monitor, and spiking IV fluids for the lines that were being attempted. John Bradley was handing personnel equipment that requested additional supplies. Suction was prepared by Bill Baca since the patients airway was full of blood. In trying to suction it was noted that we would get a tremendous amount of coagulated blood and mucus. Suction was not effective or were we able to get a clear site of the vocal cords. A Combi Tube was placed and lung sound were diminished on both sides when bagged with 100% O2.

The initial pulse was weak at the carotid, with blood and mucus streaming out the patient's mouth and nose. Once airway was established we felt for a pulse to find no pulse, but had an organized rhythm on the monitor. PEA was identified and the ACLS protocol was initiated as we arrived at PRMC. CPR was started, and bagging with 100% O2 was continued. We arrived at PRMC with patient moving the patient from the ambulance into C-2 where personnel stayed and helped staff with patient care.

It was noted that the patient was shot twice in the head, once in the chest, once in the abdomen, and once in the arm. Patient was never revived at PRMC and pronounced dead at 1405 by Dr. Patterson.

D - DISPATCHED;

On 07/12/2007 at 13:41:00 dispatched to 515 W 6TH ST /Clovis, NM 88101 for Shots Fired. 13:41:00 unit 24 en route.

C - CHIEF COMPLAINT;

13:43:00 unit 24 arrived to find a 39 year-old Male with a weight of 79.4kg./175lbs. patient complaining of Gun Shot to Patient.

H - HISTORY;

A - ASSESSMENT;

Ems found Traumatic Injury during assessment. Patient's sign and symptoms are:

Rales
Crepitus
Hemorrhage
Contusion

R - TREATMENT;

The following medications, treatments, and vitals were performed on the patient:

Time: 13:44:00 Blood Pressure: 0/0 Palp Temperature: Not Assessed G Eye: 1
G Verbal: 1 Gcs Total: 3 Notes: Patient was lying in a pool of

07/16/2007

12:18

EXHIBIT

Page

Page 41

Exhibit 2

ROBLEDO, ELADIO

2007-03764



School of Medicine

AUTOPSY REPORT

THE UNIVERSITY OF NEW MEXICO & HEALTH SCIENCES CENTER
OFFICE OF THE MEDICAL INVESTIGATOR

Albuquerque, New Mexico 87131-5091

POSTMORTEM EXAMINATION

An autopsy is performed on the body of Eladio Robledo at the Office of the Medical Investigator, State of New Mexico, on the 13th day of July 2007, commencing at 10:00 AM.

The examination is performed under the legal authority of the Office of the Medical Investigator of the State of New Mexico.

The body is received within a sealed body bag, with a "State of New Mexico, Office of the Chief Medical Investigator" evidence label, bearing the following printed and handwritten information: "Name of Deceased: Robledo, Eladio; Sealed by: 6.37; Date: 7-12-07".

145.0K

EXTERNAL EXAMINATION

The body is that of a well developed, well nourished, adult, Hispanic male who weighs 145 pounds, is 72 inches in length, and appears compatible with the reported age of 39 years. There are pink and green OMI identification bands around the right wrist inscribed with identifying information.

The body is received clad in a pair of white brief-style underpants, which are partially cut off the body for resuscitation. There are no accompanying personal effects.

The body is cool. Rigor mortis is fully fixed. Minimally evident, blanchable purple livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure.

The scalp hair is black, wavy, and measures up to 2 inches in length over the crown. The irides are brown. The pupils are round. The corneae are translucent. The sclerae are white and the conjunctivae are clear. No petechial hemorrhages are identified on the sclerae, bulbar conjunctivae, facial skin or oral mucosa. The nose and ears are normally formed, without pierce marks. The decedent wears trimmed mustache and beard stubble. The teeth are natural and in good condition. The neck is unremarkable.

The thorax is well developed and symmetrical. The abdomen is flat. The anus is free of lesions. The spine is normally formed and the surface of the back is free of lesions.

The external genitalia are those of a normal adult male.

The upper and lower extremities are well developed and symmetrical, without absence of digits.

No identifying marks or scars are readily apparent.

Evidence of medical intervention includes an orotracheal tube (correctly placed), seven electrocardiograph patches and two defibrillator pads over the anterior chest, a right antecubital intravenous line, a left antecubital intravenous line,

The man who set over advised my Envisit

2

page 42

page 1.6
 Exhibit | page 1-S

page 6

Counsel Failed to Alert the court that I
 Told him I did Fall, JURY Saw
 my SHOULDER, Sheriff docently
 manipulated me to say NO.
 (TO GO AGAINST MYSELF) ASK docently ^{CHAMBER} SEEN
 COUNSEL Failed to Call, DR FINK,
 DR. BURGESS, DR. MAXINE SWARTS
 WHO I advised I had been
 Sexually abused my moms
 big friend, + neighbor SAM SAIZ
 SEE EX.B. + 24, S pages 41, 78, 17, 13
 17, 18-27

COUNSEL Failed to Call witness, Priscilla
 Lopez, Ricky Torrealba, to HELP PROVE ^{See}
 I was the one being chased in
 yard, to HELP PROVE my testimony
 truthful,

SEE EX.B. 7, 8, 10

COUNSEL Failed to investigate family
 history of mental illness, and
 family witnesses to defense of
 INSANITY, 4. 5.

I would try to call him and
 write to talk he ignored me or was
 too busy, to. see EX.B. 4, 5, 7,
 page 13 to 24 + 27 + 30 + 47

page 43

Ineffective Assistance OF COUNSEL

THESE TWO WITNESSES
NOT CALLED BY TESSE COSBY

Grace Finley Says BOTH THUN
Build about 5'8

Ricky Jaramillo Says I
WAS ABOUT 5'8 - SEE

I WAS THE ONE BEING
CHASED - I WAS NOT
CHASING ROberto

24 22

Could OF Argued THIS
IN TRIAL

ACTION SHEET

Officer/Agent LoeraAssignment Priscilla Lopez DOB: 67
4844
#702-3471Date 07-12-07Time - Start 3:50 End 4:00

EX. 7

Action Taken (narrative):

I was @ home and heard what sound like fireworks going off. I looked out and saw a hispanic male 5'6-5'8, short hair, med build, wearing white shirt black design on back & blue jeans shorts.

He was running towards the alley. I saw two other people come out (one woman & man) then she saw the victim laying on the ground.

White shirt
blue jeans

5'6 or 5'8 height
dark

EXHIBIT

did not see face
of suspect or

Page 45

Victim

until later
seen victim
on ground

business. You got up to look out there, no vehicles, no people behind the building. You had already heard two bangs— you thought it was maybe fireworks. Uh, you were standing at your back door of your business facing south, looked around— didn't see anything unusual, no cars. Then saw hispanic male, about five foot eight, skinny, wearing blue jeans, baggy pants, blue jean baggy pants, a white tee-shirt, pullover style, had colored stripes going across the shirt, and you didn't pay attention to his shoes.

RICKY: Yeah.

✓ leading

DAN: Before he started running, he was tucking something in the waistband of his pants. He started jogging north up the alley, towards seventh street. He never saw me, he never looked towards me. Uh, he had black hair that was combed back. No facial hair. He looked 16-18 years old. Uh, you went back up towards the front of your business, which faces seventh street, uh, you never saw the guy outside in front— or what direction.

RICKY: Yes, that is correct. That's it.

DAN: Okay and then you saw the police arriving and you saw the ambulance putting the body inside the ambulance and then leave.

RICKY: Yeah, at that little house. That white house, I mean. And then of course the officer came in and gave me a statement and they taped, they yellow taped around the area. And that's all I've seen of him and that's a true statement right there.

DAN: Okay.

RICKY: The fire department was there looking on top of the building.

DAN: Yeah, like maybe he threw a weapon...

What I need for you to do is put your signature right down here at the bottom. Uh, today's date, which is the 12th.

RICKY: Okay.

DAN: 7-12-07 and the time is 4:00 PM.

RICKY: Okay.

DAN: Okay, uh, like I said, if I need anything at all.... um, somebody's gonna be calling you. I can guarantee you that, now, when it's gonna be... I don't know exactly.

RICKY: But, uh, another detective?

✗

page 46

AGUILAR: White, black, hispanic?

GRACE: I think hispanic.

AGUILAR: Okay...

Okay, um. When you say tall- I'm five foot eight.

GRACE: He's, he looke...

AGUILAR: How tall are you?

GRACE: I'm five foot four.

AGUILAR: Okay, so I'm five eight. Was the one in the front, taller? Taller than me? Or short, shorter than me?

GRACE: Um, I think about your height.

AGUILAR: Okay.

GRACE: He kinda looked (inaudible 21.19), real thin.

AGUILAR: Thin? He's leading

GRACE: Thin looking guy.

AGUILAR: Kay....

Uh, running in front of us- was this other man a white man, black man, hispanic man?

GRACE: The one behind him? Or in front? (inaudible 21.42) I think hispanic.

AGUILAR: Did it look like the shorter one was chasing him, or...

GRACE: Yeah, he was chasing him. He was chasing him.

AGUILAR: Okay.

GRACE: Can't talk too long... cause my braces, they feel horrible.

AGUILAR: You're teeth hurt? I bet they do... my daughter, I know... I brought her some tears. When they've gotten theirs put on. I bet it does. I'll try to make this as short as I can okay?

GRACE: It's okay.

Taller
now
Running
in front
of another

leading

THAT MR
RAMEREE?

REAL THIN

5'8

She just
said the

but I don't
know 5'8
she said yeah not a Ramer
accurate answer?
who was chasing who?

(over the phone)
AGUILAR: Okay, so... you, the taller male was running in front of the shorter hispanic male; the shorter one, would you say was about how tall?

GRACE: Just slightly shorter than...

AGUILAR: Slightly shorter- so five six, five eight? Five six, five seven?

GRACE: I'd say five six, five seven.

AGUILAR: Okay... was he heavier set than the other one?

GRACE: I think so, because that shirt was like...

AGUILAR: Kay, so....

GRACE: ...flowing on him, you know?

AGUILAR: Kay, so, he was a thin male too, right? Thin build?

GRACE: Yeah.

AGUILAR: Okay... they run around the side of the house, to the front yard?

GRACE: Um hum.

AGUILAR: When the taller guy fell down?

GRACE: Yeah... kinda, kinda, kinda down- I don't know- all of a sudden- just fell back. You know, just kinda braced himself. You know- like this, kinda. You know?

AGUILAR: Um, kay...
But he fell to the ground, right?

GRACE: Yes... not like flat out, he would go...

AGUILAR: Right- bout half way sittin up? Did he have an arm up?

GRACE: Yeah, he had an arm (inaudible 24.05)... I could have sworn, you know- it looked like it had to go back cause I could've sworn a hat fell off of his head.

AGUILAR: Kay... You remember which arm was up?

GRACE: (inaudible 24.32)

AGUILAR: It was out like this, like....

1 page 49

TO PROVE I WAS CHASED

GRACE: ...and, and I was trying to....

AGUILAR: ... but he was going like at an easterly direction through the yard.

GRACE: I don't think... I don't think he seen me-- like oblivious to...

AGUILAR: Um hum, and you were trying to call 911?

GRACE: I was trying to call 911-- and I couldn't... you know? I was scared so I stepped on the gas and I was trying to dial at the same time, so... and by the time I described it to them-- I look back and I (inaudible-mumbling 35.08) I was afraid to go back.

AGUILAR: Yeah... um...

Did um, the, the man that was on the ground, can you describe him? What he was wearing? Or?

GRACE: I'm pretty sure it was blue jeans... and I don't know, I see, I see brown in my head but I don't know why. But if I'm not mistaken-- somebody had a moustache, I remember. I don't know if it was him or go to... I don't know. I'm sorry I can't tell you better.

AGUILAR: That's all right. He had a cap on or a cowboy hat?

GRACE: It looked like a cowboy hat to me. And it fell off his head when he, when he stumbled back. Is that girl okay?

AGUILAR: No. Um..... one of the two men had a moustache you think?

GRACE: I think it was the guy that fell-- ~~don't quite know what the other guy looked like~~ it happened so fast.

AGUILAR: Then, uh... you said a goatee?

leading she didnt see her

GRACE: Well, kinda like-- I don't know.

AGUILAR: Kinda like mine?

GRACE: Yeah.

AGUILAR: Kay... Anything else? Let me, let me just go over what we've talked about... Kay, you left Taqueria Jalisco, do you remember what time that was at?

GRACE: No, I just know that...

AGUILAR: What time do you have to be at...

GRACE: ... we got there at 1:10-- about 1:10. I'm gonna have to ask my husband, he would

PAGE 50

SEE

SEE PAGE 7

EXB. + 2

EXB. 4, 5

PAGE 17

PAGE 19

EXB. 1 PAGE 25

COUNSEL FAILED TO KEEP PROMISES
MADE, OF BEING ABLE TO TESTIFY
ABOUT SEXUAL ABUSE AND THAT HE
WOULD FILE MOTIONS & ASKED HIM
TO FILE CHANGE OF VENUE.
SEE EXB. 4, 5, 10

PAGE 47

COUNSEL FAILED TO CALL MY FATHER & BROTHER
WHO WOULD TESTIFY ELADIO FABELLO
WAS VIOLENT AND HAD ASSAULTED ME
AND THEM IN PAST.
MY FATHER AND BROTHER ARE WILLING
TO TESTIFY TO THIS AT HEARING.

COUNSEL FAILED TO CALL DR MAXINE
SWARTS AS WITNESS WHO WOULD
TESTIFY AS TO MY INSANITY DEFENSE
AND SEXUAL ABUSE AND INCOMPETENCY

SEE EXB. 4, 5, 10

PAGE 39 TO 43 + 47

COUNSEL FAILED TO PRESENT MY
DEFENSE AT TRIAL.

~~COUNSEL FAILED TO GIVE ME ADVICE WHEN~~

COUNSEL FAILED TO GIVE ME ADVICE WHEN
I ASKED OCELT WAS DEAD WHEN I KILLED
MURDER DAD. DO I TELL THAT OR NOT. HE DID NOT
421 PAGE

PAGE 51

page 8

COUNSEL Failed to GET MEDICAL RECORDS to SHOW I WAS ON CRUTCHES, unable to work or walk,

COUNSEL Failed to advise me of the plea did not explain the maximum & minimum time I was facing even though I tried to ask. (SEE PAGE 4) 5, 6

COUNSEL Failed to Be respectful and responsible and fulfill his duty of loyalty and advocate to me his client.

COUNSEL Failed to Argue I was the one being chased by Robledo that I was 100 pounds and Robledo 175 pounds, not 145 as medical examiner said, page - 7-10

SEE EXHIBITS 2,

COUNSEL Failed to Alert court I was hearing voices during trial. SEE EXHIBIT, 1, 1A, 4, 5, 6

page
10

page 47

page
10

SEE EXHIBIT 10

APPROPRIATE COUNSEL FAILED TO CISK AN
APPEAL FOR AN EVIDENTIARY
HEARING ON ALL THESE PROBLEMS.

COUNSEL FAILED TO ARGUE IT WAS
~~ANOTHER~~ DOUBLE JEOPARDY TO CHARGE 47
ME TWICE WITH 31 ~~OTHER~~ ^{page} 47
TAMPERING WITH EVIDENCE EXHIBIT 10

THE DISTRICT COURT FAILED TO
INQUIRE INTO THE MATTER
WHEN IT IS ON RECORD
MR. RAMIREZ COMPLAINED ON
MORE THAN ONE OCCASION ~~OF~~
TO THE JUDGE OF HIS FRUSTRATION
WITH DEFENSE COUNSEL. AND
EVEN THOUGH MR. RAMIREZ ASK
FOR SUBSTITUTE OF COUNSEL
TWICE BEFORE TRIAL AND
Fired HIS ATTORNEY TWICE
IN TRIAL IN FRONT OF
JURY. AND ASKED TO
REPRESENT HIMSELF.

SEE EXHIBIT. 1, ~~2~~, 6
page 1 - SEE EXHIBIT 1
EXHIBIT 6 - page 28,
page 58

page 4

page 1 through 5

page 11

Exhibit 1,

Counsel Failed to communicate
Back with Mr. Ramirez, even
though Mr. Ramirez tried
to do so.

Mr. Ramirez received Ineffective
Assistance of Counsel and denied
his Constitutional Right to
Effective Assistance of Counsel.

I Mr. Ramirez ask the Court
to appoint attorney to assist
with habeas process.

Mr. Ramirez ask for an evidentiary
hearing to dispute the record
necessary to prove allegations
- A disposition hearing also. -

Also attached witness statement by
my brother Jose Ramirez who spoke
to Mr. Cosby and told me
to file my attorney.

Sincerely

A. B. S. T.
Ramirez

page 54

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

FILED
9th JUDICIAL DISTRICT COURT
Curry County
9/24/2020 1:06 PM
SHELLY BURGER
CLERK OF THE COURT

ALBERT RAMIREZ,
Petitioner,
vs.

No. D-905-CR-2007-00434
(Hon. Drew Douglas Tatum)

STATE OF NEW MEXICO,
LEON MARTINEZ, Warden,
Respondents.

NOTICE OF 5-802(H)(1) PRE-APPOINTMENT REVIEW

The Post-Conviction/Habeas Unit of the Law Offices of the Public Defender provides notice to the Court and Counsel for Respondents of its review in accordance with Rule 5-802(H)(1), NMRA 2017 and states the following:

- 1) The Ninth Judicial Court Clerk filed the *pro se* Petition for Writ of Habeas Corpus on August 18, 2020.
- 2) The Law Offices of the Public Defender (LOPD) was served with the *pro se* Petition for Writ of Habeas Corpus by the Court Clerk on August 18, 2020.
- 3) Pursuant to Rule 5-802(H)(3) NMRA, this review is timely filed on or before October 2, 2020.
- 4) As per, 5-802(H)(1) LOPD has reviewed the Petition and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.¹

¹ Under the Indigent Defense Act, Sec. 31-16-3 (B)(3) a person has the limited right to appointed counsel representation in post-conviction matters "unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense." (Emphasis supplied).

Procedural History:

- 1) Petitioner filed four previous *pro se* petitions for writ of habeas corpus in 2017, on March 22, 2017, April 25, 2017, June 20, 2017, and July 17, 2017.
- 2) On May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel. Liane Kerr.
- 3) The Amended Petition raised six issues:
 - a. Petitioner was denied his Sixth Amendment right to effective assistance of counsel and his right to compulsory process when his trial attorney failed to call Dr. Maxann Schwartz, Ph.D to testify at either a competency hearing or at trial;
 - b. Petitioner's convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced;
 - c. Defendant's due process rights were violated when jurors observed him shackled and fall during trial;
 - d. Sufficiency of the evidence;
 - e. Prosecutorial misconduct for statements made during closing arguments; and
 - f. Double jeopardy violation for being convicted of two counts of Tampering with Evidence.
- 4) The State filed a response to the Amended Petition on September 10, 2018.
- 5) A Preliminary Disposition Hearing was held on October 29, 2018.
- 6) On December 14, 2018, the Court issued an Order Denying Petitioner's Petition for Writ of Habeas Corpus.
- 7) Petitioner filed a fifth *pro se* Petition for Writ of Habeas Corpus on June 24, 2019 where he raised the issues of ineffective assistance of counsel from his trial counsel, appellate

counsel, and counsel assigned to his previous Habeas Petition; Whether the trial court abused its discretion in denying Petitioner's request and demand to fire or substitute his counsel; Whether introduction of Petitioner's prior uncharged acts at trial violated his due process rights; Whether statements made by the prosecuting attorney during closing arguments and cross examination of Petitioner constituted prosecutorial misconduct.

- 8) In reviewing the June 24, 2019 petition, LOPD concluded that Petitioner did not appear to assert any additional claims that he had not previously raised in prior petitions.

Petitioner asserted that Ms. Kerr "failed to raise 3 or 4 issues" that Petitioner had raised in his previous pro se Petition, but it was unclear specifically which issues Petitioner believed had not been adequately addressed.

Issues and Analysis:

- 9) In the instant petition, Petitioner seeks appointment of a habeas attorney to "assist him in habeas proceedings, and an evidentiary hearing to present what the jury actually saw, and allegations to be proved."

- 10) Petitioner raises the following issues in his *pro se* petition:

- a. Irreconcilable conflict between trial counsel and Defendant and ineffective assistance of trial counsel for:
 - i. Trial counsel was racist and called Petitioner a "dirty Mexican" and told him "you little stupid bitch...I hope you get life."
 - ii. Failure to file motions including:
 1. Motion to suppress illegally obtained evidence;
 2. Motion for change of venue due to the incident occurring in the small town of Clovis, and media reports stating that Petitioner

attacked the victim on prior occasions which was highly prejudicial;

3. Motion for mistrial for the jury seeing Petitioner in shackles and falling down;
- iii. Failure to keep Petitioner informed of plea deals, discuss strategy, and maximum sentences.
- iv. Failure to allow Petitioner to testify that the Victim sexually abused Petitioner, and that Petitioner was intoxicated on the date of incident.
- v. Failure to call witnesses including:
 1. Pricilla Lopez (neighbor eyewitness) and Ricky Jaramillo (eye witness) in order to prove that Petitioner was the one being chased and shot Victim in self-defense;
 2. Petitioner's dad, Jose Ramirez to testify that Victim attacked him on two prior occasions and was aggressive;
 3. Petitioner's aunt, sister, brothers, and friends; and
 4. Doctors who treated Petitioner after an accident which resulted in mental illness, and Petitioner being placed on medications.
- vi. Failure to investigate family history of mental illness.
- vii. Failure to present insanity defense.
- viii. Failure to alert the Court that Petitioner was hearing voices on the day of trial.
- ix. Failure to raise double jeopardy defense.
- x. Failure to poll the jury about seeing Petitioner fall.

- b. Due process violations for:
 - i. Court not allowing substitution of counsel;
 - ii. The jury witnessing Petitioner in shackles and fall down;
 - iii. Evidence of prior bad acts;
 - iv. Improper comment on silence;
 - v. Invalid indictment because the grand jury proceedings incorporated hearsay from Ivan Vasquez who testified that Petitioner threatened to kill Victim, and this witness did not show up to trial and later wrote an affidavit recanting his statements;
 - vi. Double jeopardy violation.
- c. Ineffective assistance of habeas attorneys for not arguing what he wanted, not taking into consideration his opinion, filing amended petition without sufficient time, not allowing Petitioner to speak at the disposition hearing, not meeting with Petitioner, not requesting a transcript of the closing argument, not raising the issues of sufficiency of the evidence, not raising the issue of double jeopardy on the tampering charges, and not raising the issue of prosecutorial misconduct for statements made in closing.
- d. Ineffective assistance of appellate attorney for not asking for an evidentiary hearing.
- e. Prosecutorial Misconduct for comment on Petitioner's legal research, and statements in closing argument regarding Petitioner's prior bad acts, and that Petitioner is a "menace to society."

- 11) All of Petitioner's claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34579. The only additional issue raised in the instant petition is regarding Petitioner's indictment.
- 12) "[A] defendant may not seek post-conviction relief for issues raised on direct appeal that were decided on the merits against defendant." *State v. Gomez*, 1991-NMCA-061, ¶ 5, 112 N.M. 313. Petitioner does not assert that there was an insufficient record to address the matter on appeal, which would permit further review. *Id.* Petitioner failed to address the fact that the same issues were raised and decided against him on appeal. This does not provide sufficient basis for habeas review.
- 13) Pursuant to Rule 5-802(1) "Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to: (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim."
- 14) The applicable committee commentaries for the relevant 2014 amendments are as follows:
"Paragraph B(5) is amended to clarify that it applies to successive petitions for habeas relief. District courts should ordinarily dismiss petitions that do not comply with the provisions of Paragraph B(5). Paragraph H gives the district court guidance as to the handling of successive petitions for habeas relief. The standard is higher for a petitioner raising a claim rejected in a previous habeas petition than a claim rejected on direct appeal. Standard notions of claim and issue preclusion generally do not apply in habeas cases.

Campos v. Bravo, 2007-NMSC-021, ¶ 5, 141 N.M. 801, 161 P.3d 846. Courts have some discretionary capacity to dismiss habeas claims when a prior petition has been filed. According to *Duncan v. Kerby*, 1993-NMSC-01 1, 115 N.M. 344, 851 P.2d 466.” The rule on successive petitions focuses primarily on petitions in which the same grounds were raised and denied on the merits. See *State v. Canales*, 1967-NMSC-221, ¶10, 78 N.M. 429.

15) Petitioner raises claims of ineffective assistance of trial, appellate, and habeas counsel.

The Sixth Amendment’s guarantee of effective assistance of counsel applies on direct appeal as well as in the trial courts. *Welch v. Workman*, 639 F.3d 980 (10th Cir. 2011) (petitioner challenging effectiveness of counsel on appeal “must show that appellate counsel’s representation fell below an objective standard of reasonableness in light of prevailing professional norms.”) If appellate counsel ignores a “compelling issue” on appeal, a petitioner may prevail if, “but for counsel’s unprofessional errors the result of the proceedings would have been different”, i.e. the appellate proceeding. *Id.* at 1015. Petitioner must first demonstrate that counsel’s performance was deficient and second that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). That is, that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

16) Regarding Petitioner’s claim of an invalid indictment, pursuant to NMRA 5-302A(B):

“All evidence presented shall be lawful, competent, and relevant, but the Rules of Evidence shall not apply.” There is no indication that the State was aware of any false testimony at the time of the grand jury proceedings. “When the petitioner alleges that the prosecution deliberately participated in the falsification, we require the petitioner to show: (1) that the original testimony was, in fact, false; and (2) that it was knowingly,

wilfully and intentionally used by the prosecution to procure the conviction.” *Case v. Hatch*, 144 N.M. 20, 2008-NMSC-0024 ¶8, 183 P.3d 905 (internal quotes omitted).

17) Therefore pursuant to Rule 5-802(G)(1), the Post-Conviction Habeas Unit, Law Offices of the Public Defender, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person’s own expense and defers to the Court pertaining to further appropriate action.

As per Rule 5-802(H)(1) NMRA 2017, undersigned counsel submits this review for the limited purpose of said procedural rule and is not Counsel of Record on this matter.

I hereby certify that a copy of this notice was transmitted to Petitioner and Counsel for Respondent upon filing.

/s/ Sarah Gallegos
Sarah Gallegos
LOPD Habeas

Respectfully Submitted,

/s/ Sarah Gallegos
Sarah Gallegos
Post-Conviction Habeas Unit
Law Offices of the Public Defender
505 Marquette Ave. NW, Suite 120
Albuquerque, NM 87102
(505) 219-2884

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

FILED
9th JUDICIAL DISTRICT COURT
Curry County
10/5/2020 10:25 AM
SHELLY BURGER
CLERK OF THE COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONER'S MOTION TO EXPAND RECORD**

THIS MATTER having come before the Court upon the *pro se* Petition for Writ of Habeas Corpus filed by the Petitioner on August 18, 2020 and the *pro se* Motion to Expand Record filed on September 24, 2020, and the Court being fully advised, enters its *sua sponte* Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on August 18, 2020.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on September 24, 2020 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate

- means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment.”
5. LOPD determined that Petitioner's Petition is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
 6. In their eight (8) page Notice, LOPD notes that this is the sixth pro se petition for Writ of Habeas Corpus filed by Petitioner. Petitioner's previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017, July 17, 2017 and June 24, 2019. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated by reference herein as though fully set forth. Also, as to Petitioner's Petition for Writ of Habeas Corpus filed on June 24, 2019, this Court entered a Decision and Order of Summary Dismissal on August 12, 2019 (just six days before the instant Petition was filed). Said Decision and Order of Summary Dismissal is incorporated by reference herein as though fully set forth. Moreover, Petitioner appealed his conviction. The New Mexico Supreme Court affirmed Petitioner's conviction.
 7. In their Notice, LOPD addresses the numerous issues raised by Petitioner before concluding that, “All of Petitioner's claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34576. The only additional issue raised in the instant petition is regarding Petitioner's indictment.”

8. While addressing the applicable law related to Petitioner's indictment, LOPD determined that there is no evidence showing that the State knowingly used false testimony before the grand jury.
9. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
10. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
11. Rule 5-802(H) NMRA states:

H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:

- (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
- (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on August 18, 2020, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
13. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed August 18, 2020, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of

law or fact. This Court finds that the ends of justice would not be served by rehearing the claim.

14. Additionally, Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. In his current Petition, Petitioner failed to address the fact that many issues raised were the same issues decided against him on appeal and failed to provide additional, relevant facts.

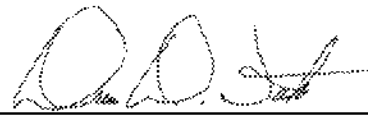
15. Also, this Court finds that Petitioner's claim related to his indictment is not supported by fact or the record in this matter. Petitioner is not entitled to relief as a matter of law on such claim.

16. As noted above, Petitioner filed a Motion to Expand Record filed on September 24, 2020. This Court finds that said Motion is directly related to Petitioner's Petition for Writ of Habeas Corpus filed August 18, 2020. This Court has fully considered the additional information and requests made in said Motion. The Motion to Expand Record filed on September 24, 2020 shall be denied.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed August 18, 2020 is DISMISSED. Additionally, the Motion to Expand Record filed on September 24, 2020 is hereby DENIED.

A handwritten signature in black ink, appearing to read 'D.D. Tatum', is positioned above a horizontal line.

HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

9-702. Petition for writ of certiorari to the district court from denial of habeas corpus.

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO RAMIREZ

Defendant-Petitioner,

S.Ct. No. 38539
(leave blank; court will assign)

v.

LEON MARTINEZ

(Name of Warden)

District Ct. No. D-905-CR-2007-00434

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICO

SUPREME COURT OF NEW MEXICO
FILED

OCT 26 2020



ALBERTO RAMIREZ
Defendant-Petitioner pro se

P.O. Box 10501
SANTA FE, N.M. 87501
(address information)

PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ALBERTO RAMIREZ v. LEON MARTINEZ (your name v. Warden's name),

District Court No. _____ filed on _____.

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

SEE ATTACHED PAGES
EXPLAINING ALL ISSUES EVERYTHING

EXHIBIT

KK

SEE ATTACH PAGES. AND MY HABEAS
PETITION. TO MUCH TO WRITE NOT
ENOUGH SPACE. ISSUES 1-8

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

MURDER IN THE FIRST DEGREE AND
TWO TAMPERING W/ EVIDENCE TO RUN
CONCURRENT

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

IM NOT SURE. I DONT KNOW. JURY.
HABEAS CORPUS PETITION AND HABEAS
AMENDED PETITION BY JAMES C. KESTER THEN
ANOTHER HABEAS PETITION 8:19. 2020

3. Tell the story of what happened in your court case:

IRRELEVANT CONFLICT BETWEEN TRIAL COURT AND DISTRICT
TRIAL COURT VERBALLY ABUSE AND PERSI COMMENTS AND THREAT
TO NOT PROVIDE EFFECTIVE ASSISTANCE IF MY FATHER DID NOT
TALK WITH DEFENDANT SHACKLED IN JURY PRISON OF TRIAL
DEFENDANT FEEL DOWN AND JURY SEEN HIM SHOCKED AND SHAMING
during the interview manipulated or twisted to say it was not
happening - violation of U.S. CONSTITUTION, VIOLATE STATE & FEDERAL
AND PROCESS. COMMENTS AND SILENCE. NUMEROUS VIOLATIONS
OF PROSECUTORIAL MISCONDUCT PER RED ACTS EVIDENCE. GRAND
JURY INDEMNITY, DOUBLE SLEEPING, THE FATHER'S ASSISTANCE. GRAND
HABEAS - CONSTITUTIONAL REVIEW SEE ATTACH PAGES ISSUES 1-8

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

- ① Irreconcilable conflict between trial counsel and defense counsel verbally abused and racist comments and threats to not help if Mr. Ramirez did not take plea. 14th Amendment.
- ② Defendant shocked in guilt phase of trial and fell almost Sheriff secretly manipulated Mr. Ramirez to say he did not fall down. Mr. Ramirez told trial counsel this to happen this violated U.S. Constitution and State and Federal Right to due process and Fair trial 14th Amendment
- ③ Improper comment on silence detective stated he attempted to interview Mr. Ramirez. Violation of Right to remain silent 5th Amendment protected by 14th Amendment.
- ④ Numerous instances of prosecutorial misconduct. Comment about doing legal research, ⑤ closing argument prior had acts saying Mr. Ramirez head butted a police officer, Brooke witness to show bad character amounted to misconduct, PRO told jury was a civil matter to society with no prior Right to Fair trial by 14th Amendment.
- ⑥ State Bar was unethical State and Federal Right to due process and Fair trial all violated by unethical and prosecutorial misconduct.
- ⑦ Challenge of the Grand Jury indictment hearing was and not allowed in trial by jurys witness Sanchez stated I threatened to kill victim but never followed. Juror Sanchez did not show up to trial and never appeared. Recalling as he said.
- ⑧ Double jeopardy. See attach pages
- ⑨ Ineffective assistance of Habeas Counsel Linnée Kerr. ex. Habeas collateral Review, she did not argue yet what I wanted and did not take my opinion and it on her own. Only had 30 days. she rushed to busy, she just wanted to make quick \$5,000. Not Fair
- ATP

POINT 1:

SEE ATTACH PAGES ISSUES 1-8
 INEFFECTIVE RESISTANCE OF COUNSEL
 IRRECONCILABLE CONFLICT BETWEEN TRIAL
 COUNSEL AND DEFENDANT, COUNSEL UNWITTINGLY
 ABUSED, AND FALSIFY DOCUMENTS AND TOLERATE
 TO NOT HELP MR. RAMIREZ IF HE DID NOT
 TAKE PLACE. COUNSEL FAILED TO PROSECUTE
 FOR CHANGE OF VENUE AND MISFEASANCE SHOCKES ETC.

POINT 2:

SEE ATTACH PAGES
 SHOCKES AFTER JURY SEEN DEFENDANT
 SHOCKES AND PAUL GUNN SHOCKES
 ACCUSATION THREATENED MR. RAMIREZ TO SAY
 HE DID NOT FOR JURY DID NOT SEE SHOCKES.
 VIOLATION OF STATE AND FEDERAL LAW PROCESS
 VIOLATION OF U.S. CONSTITUTION.

POINT 3:

SEE ATTACH PAGES ③ Improper comment
 ON S. 1200. ④ NUMEROUS INSTRUCTIONS OF
 PROSECUTORIAL MISCONDUCT ⑤ PROSECUTORIAL
 CHALLENGE AT JURY INSTRUCTIONS
 ⑥ DOUBLE JEOPARDY ⑦ INEFFECTIVE
 ASSISTANCE OF HABEAS COUNSEL LITIGATION
 ON CONSTITUTIONAL REVIEW. SEE ATTACH PAGES
 (Attach additional sheets, if necessary). GO WITH THIS

REQUEST FOR RELIEF

ISSUES 1-8.
 THANK YOU

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court,
 and:

- ☒ remand to the district court for a full hearing on the petition, OR
- ☒ reverse the conviction, OR
- ☐ remand to the district court to correct the sentence, OR
- ☒ (other) APPOINTMENT OF COUNSEL

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

- ☒ a copy of my petition for writ of habeas corpus filed in district court, AND
- ☐ a copy of the state's response, if one was filed, AND
- ☐ a copy of the district court's order.
- ☒ I have not attached the required documents because

I wrote down state response and district
 court's order. TO SEND OUT ASAP.

Process claims and U.S. Constitution Prote
by 5th and 14th Amendment

1 IRRECONCILABLE CONFLICT OF INTEREST BETWEEN
MR RAMIREZ AND TRIAL COUNSEL DID TRIAL COUN
ABUSE its discretion to not allowing INQUIRY II
DISATISFACTION AND MR RAMIREZ TRIED TO FIRE
OR SUBSTITUTE COUNSEL IN JUNE 2013 2 WEEKS
BEFORE TRIAL IN THAT ASKED TO NO AVAIL. 16TH
1000 AMENDMENT RIGHT TO STATE AND FEDERAL DUE PRO
TO FAIR TRIAL AND U.S. CONSTITUTION TO RECEIVE
EFFECTIVE ASSISTANCE OF COUNSEL IN TRIAL AND
PROTECTED BY THE 14TH AMENDMENT.

2 STATE AND FEDERAL RIGHT TO FAIR
TRIAL AND DUE PROCESS AND VIOLATION OF
U.S. CONSTITUTION TO BE SHACKLED DURING
GUILT PHASE OF TRIAL & PROTECTION BY 5TH AND
14TH AMENDMENT SEE DECK VS MISSOURI 544
U.S. 635 (2005) SEE STATE VS BRAWLEY GITE 45
137 A.3D 757 (CONN 2014) I ASK COURT
FOR ALLOW ME TO EXPAND RECORD OF EVIDENTIARY
HEARING TO ESTABLISH GUILTY AND IF FACT OBSERVE
ME IN SHACKLES AND FALL DOWN AND SHERIFF
DOCEITY THREATENMENT COERCED ME TO SAY IT
DID NOT HAPPEN. I TOLD LAWYER TO NO AVAIL

Improper comment on silence
 Deputy testified He tried to
 or attempted to get a statement
 from Him Mr Ramirez. SEE deputy loomis
 report same thing says attempted to
 get a statement. post miranda exercise
 of the 5th Amendment Right to remain
 silent is protected against by 14th?
 5th amendment due process clause US
 Constitution Amend V; NM Constitution
 Art V, 14 State v. gutierrez 2007.
 N.M. SC - 033, ~~033~~ 142, N.M. 1, 162
 P3d 156. State and Federal Right
 to due process.

- NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT. State and Federal Right to fair trial due process 14th Amendment AND U.S. CONSTITUTION. 5th Amendment +
- ① PRIOR Bad Acts Evidence Violated State and Federal Right to due process to A Fair TRIAL AND U.S. CONSTITUTION 5th and 14th Amendment.
- ② Challenge the Grand Jury Indictment Recanted Testimony and Statements AND Hearsay IN Indictment.
- State VS. DOMINIQUEZ 115 NM 445 456 853 P2d 147, 150 1st APP 1993
- ③ ~~STATE VS. DOMINIQUEZ 115 NM 445 456 853 P2d 147, 150 1st APP 1993~~
- ④ DOUBLE JEOPARDY U.S. CONSTITUTION Amend. IMPRESSING Multiple Punishments for tampering charges directed at same item of evidence violations the Right to Be Free From double Jeopardy State V. Degraff 2006 NMSC = 011034, 139 NM 211, 131 P3d 61.
- ⑤ INEFFECTIVE ASSISTANCE OF ~~ATTORNEY~~ HABEAS CORPUS ON COLLATERAL REVIEW and OF Amended petition CONSEQUENTIALLY when a petition for writ of HABEAS CORPUS ALLEGES particular Facts set out a claim of inadequate representation, petitioner IS ENTITLED to hearing. State V. MOSES, 1967-NMSC-163 6, 78 NM 212

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

ALBERTO ROMIREZ
Defendant-Petitioner, pro se

DE VERIFICATION
STATE OF NEW MEXICO
COUNTY OF Santa Fe

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On October 16th, 2020 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the New Mexico Supreme Court at the following address:

New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico, 87504-0848.

ALBERTO ROMIREZ
(Signature)
P.O. Box 1157
(Address)
Santa Fe, NM 87501
PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 24 day of
Sept., 2021, by

ALBERTO ROMIREZ
(Name of Petitioner)

Notary Public

8/10/24
My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this October 16th day of 2020.

ALBERTO ROMIREZ
Defendant-Petitioner, pro se

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

Read sent here
Nov 4th 2020

This is 2nd PART S-HSC-38539

of writ of certiorari

For Alberto Ramirez

I had to send it

in two letters envelopes

Please help court clerk

And judges I gave a copy
of everything to writ manager

to send it but I believe he
did not send it Habeas, writ
Certiorari and decision.

PS. Next week I will send
Decision and dismissal form
in letter free envelope.

to add to Certiorari

It's not my fault Alberto
writ manager didn't Ramirez
send it I asked him to, 64507

SUPREME COURT OF NEW MEXICO
FILED

NOV - 4 2020

EXHIBIT

LL

SEE ATTACH PAGES ISSUES 1-8

POINT 1:

INEFFECTIVE ASSISTANCE OF COUNSEL
IRRECONCILABLE CONFLICT BETWEEN TRIAL
COUNSEL AND DEFENDANT COUNSEL VERTUALLY
ABUSED, AND RACIST COMMENTS AND THREATS
TO NOT HELP MR RAMIREZ IF HE DID NOT
TAKE PLEA COUNSEL FAILED TO FILE MOTION FOR
CHANGE OF VENUE AND MISTRIAL SHOCKING ERROR.

POINT 2:

SEE ATTACH PAGES
SHOCKING ERROR JURY SEEN DEFENDANT
SHOCKED AND FELL DOWN SHOCKED
JURY THREATENED MR. RAMIREZ TO SAY
HE DID NOT FALL JURY DID NOT SEE SHOCKING
VIOLATION OF STATE AND FEDERAL DUE PROCESS
VIOLATION OF U.S. CONSTITUTION

POINT 3:

SEE ATTACH PAGES ③ IMPROPER COMMIT
ON SILENCE ④ NUMEROUS INSTANCES OF
PROSECUTORIAL MISCONDUCT ⑤ PRIOR BAD ACTS
⑥ CHANGE GRAND JURY INDICTMENT
⑦ ALIBI JEOPARDY ⑧ INEFFECTIVE
ASSISTANCE OF HABEAS COUNSEL LAWYER
ON CRIMINAL REVIEW
PLEASE SEE ATTACH PAGES

(Attach additional sheets, if necessary).

REQUEST FOR RELIEF

GO WITH THIS
ISSUES 1-8
THANK YOU.

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court,
and:

- ☒ remand to the district court for a full hearing on the petition, OR
- ☒ reverse the conviction, OR
- ☐ remand to the district court to correct the sentence, OR
- ☒ (other) APPOINTMENT OF COUNSEL, EXPEND RECORD

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

- ☒ a copy of my petition for writ of habeas corpus filed in district court, AND
- ☐ a copy of the state's response, if one was filed, AND
- ☐ a copy of the district court's order.
- ☒ I have not attached the required documents because

NOT
MY
FAULT
UNIT
MANAGER.

I WRITE DOWN STATES RESPONSE AND DISTRICT
COURT'S ORDER TO SEND OUT ASAP.
I PUT IT IN MANILLA ENVELOPE
I GAVE TO UNIT MANAGER OFFICE
DID NOT SEND IT ALL.

PETITION WAS DENIED AND DISMISSED IN 9TH DISTRICT COURT.

① IRRECONCILABLE CONFLICT OF INTEREST

Between Mr Ramirez and trial counsel did trial court
Abuse its discretion to not allowing inquiry IN
Dissatisfaction and Mr Ramirez tried to Fire or
Substitute counsel in June 2013 2 weeks before
trial IN trial asked to NO avail
6th amendment Right to State and Federal
due process to Fair trial and U.S.
CONSTITUTION to receive EFFECTIVE
Assistance OF counsel in trial. Protected by 14th

② State and Federal Right to Fair
Trial and due process and violation OF
U.S CONSTITUTION to be shackled during
guilt Phase OF trial. Protection by 5th and
14th amendment See deck U.S. Missouri 544 U.S.
639 (2005) SEE state VS. Brawley cite as
137 A 3d 757 (CONN 2016) I ask court to
Allow me to Expand record OF Evidentiary
hearing to establish Jury did in fact
observe me in shackles and Fall down and
Sheriff do ceremony threatened Coerced me to
Say It did Not happen. I told
Lawyer to NO avail.

Improper comment on Silence
 Deputy testified He tried to
 or attempted to get a Statement
 From Him Mr Ramirez. SEE deputy
 loomis Report same thing says
 attempted to get a Statement
 post miranda exercise of the
 Stn admnstr ment Right to Remain
 Silent is protected against by 14th
 and Stn admnstr ment due process
 Clause U.S. Constitution Amend
 V; NM. constitution, Art 14.
 State v. Gutierrez 2007 NMSC —
 033, 142, NM 11, 162, 23d, 56
 State and Federal Right to
 due process.

④ NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT, State and Federal Right to Fair trial due process: 14th amendment and U.S. CONSTITUTION 5th amendment

⑤ Prior bad ACTS Evidence violated State and Federal Right to due process to a Fair trial and U.S. CONSTITUTION 5th and 14th amendment

⑥ Challenge the grand jury indictment Recanted testimony and statements and Hearsay IN indictment.

State. v. Dominguez 115 N.M. 445 456 853 P2d 147, 150 Ct. App 1993

⑦ Double Jeopardy U.S. constitution amends Imposing multiple punishment for tampering charges directed at same item of evidence violations the Right to Be Free From Double Jeopardy State. v. Degraff 2006 NMSC-011, 34, 139 N.M. 211, 131 P3d 161

⑧ Ineffective Assistance of HABEAS counsel ON collateral Review and OF Appended Petition (consequently when a petition for writ of HABEAS CORPUS ALLEGES particular facts set out a claim of inadequate representation petitioner is entitled to hearing State vs. Moses 1967 - NMSC - 163 6, 78, N.M. 212

THE ERRORS ALL
TOGETHER Added up
to cumulative error
and denied petitioners
OF a fair trial
and a denial of
due process

Request Evidentiary hearing
or to expound Record
an public defender
to assist in Habeas
process.

Thank you

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

ALBERTO ROMIREZ
Defendant-Petitioner, pro se

92 VERIFICATION
STATE OF NEW MEXICO
COUNTY OF Curry Santa Fe

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On December 16th, 2024 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the New Mexico Supreme Court at the following address:

New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico, 87504-0848.

Alberto Romirez
(Signature)
P.O. Box 1059
(Address)
SANTA FE NM. 88001
PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 24 day of
SEP. 14th, 2021, by

Alberto Romirez
(Name of Petitioner)

Notary Public

8/10/24
My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this December 16 day of 2024.

ALBERTO ROMIREZ
Defendant-Petitioner, pro se

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

Recall this Important

DEAR COURT CLERK and Judges
 I SENT petition For writ
 OF certiorari with copy of
 HABEAS AND gave it to
 UNIT MANAGER to sign and
 send out I don't believe
 it was so. I sent it
 Again only writ NO HABEAS
 Please look out I sent
 it in two free envelopes
 Half in one then half in other

Please Know I've tried
 diligently to comply with
 Courts Rules. I hope you
 got my writ with habeas
 and courts decision and dismissed
 I didn't send it again not
 enough papers.

Thank you

Sincerely

Alberto
 Ramirez

I did not send
 copy of my petition for
 writ of habeas corpus
 Filed in district court because P.O. Box 1054
 I gave it to unit manager Santos Fernan
 to send out I think he did not send it. 87504

SENT before
 November 2020

Sent 9:50c 4th 2020

9-702. Petition for writ of certiorari to the district court from denial of habeas corpus.

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALBERTO RAMIREZ

Defendant-Petitioner,

S.Ct. No. _____
(leave blank; court will assign)

v.

LEON MARTINEZ
(Name of Warden)

District Ct. No. _____

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICOALBERTO RAMIREZ
Defendant-Petitioner pro seP.O. Box 1059
SANTA FE, NM 87504
(address information)PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

ALBERTO RAMIREZ v. LEON MARTINEZ (your name v. Warden's name),

District Court No. _____ filed on _____

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

SEE ATTACH PAGES
EXPLAINS ALL ISSUES EVERYTHING

SEE ATTACH PAGES AND my habeas
petition to much to write Not
enough space ISSUES 1-8

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

MURDER IN THE 1st degree AND
two tampering w/ evidence to RUN
CONCURRENT.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

IM NOT SURE I DONT KNOW SORRY
HABEAS CORPUS petition AND HABEAS
AMENDED petition by Liane R. KERR
THEY ON THE HABEAS 8.18.2020

3. Tell the story of what happened in your court case:

IRRECONCILABLE CONFLICT BETWEEN TRIAL COUNSEL and
DEFENDANT TRIAL COUNSEL verbally abusive and racist comments
and threat to not provide effective assistance if Mr.
Ramirez did not take plea. Defendant smothered in guilt phase
of trial, defendant fell down and jury seen him smothered and
sheriff decency threatened. Manipulated Mr Ramirez to
say it did not happen, violation of U.S. Constitution, violates
State and Federal due process. Comment on Silence in numerous
instances of prosecutorial misconduct, prior had actual evidence
Grand jury indictment, double jeopardy, ineffective assistance
of Habeas & Collateral Review see attach pages 1-8
BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE ISSUES.

DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

State consciously the facts upon which the claim
 # ① irreconcilable conflict between trial counsel
 and defendant counsel verbally abused and racist comments
 and threats to not help if Mr Ramirez did not
 take plea 6th amendment.

② Defendant snickered in guilt phase of trial
 and Fendown Sheriff decty manipulated Mr.
 Ramirez to say he did not Fendown. Mr
 Ramirez told trial counsel this to NO avail
 This violated U.S. constitution and violated
 State and Federal Right to due process
 and fair trial 14th amendment.

③ Improper comment ON Silence detective
 Stated he attempted to interview
 Mr Ramirez. violation of Right to remain
 silent 5th amendment and 14 amendment

④ Numerous instances of Prosecutors
 misconduct. comment about Ramirez doing legal
 research @ closing arguments prior bad acts
 saying Mr Ramirez had butted a police
 officer, Broke windows used to show bad
 character amounted to misconduct also
 told jury Hes a liar, menace to Society with
 no proof Right to Fair trial by
 14 amendment.

TURN page

#5 Prior bad acts violates state and Federal
Right to due process and Fair trial
Protected by 14 amendment.

#6 Challenge of the grand jury Indict-
ment hearsay used and NOT allowed in trial
By jury. witness Sam said I threatened
to kill victim but hearsay inadmissible also
Even Vasquez did not show up to trial and
wrote affidavit Recounting all he said

#7 Double Jeopardy see attach pages

#8 Ineffective assistance of Habeas
counsel Lina R. KERR ON HABEAS COLLATERAL
Review, She did not argue, what I
wanted and did not take my opinion
did it on her own. only had 30 days
She Rushed to busy. she just
wanted to make quick \$,000 not fair

AJR

ATTACH IS COPY OF DECISION AND DISMISSAL
WRITTEN BY HAND.

TO. NEW MEXICO SUPREME COURT JUDGES AND CLERK

ALERT TO FACT WHY MY HABEAS CORPUS,
WRIT OF CERTIORARI AND COPY OF DECISION AND
DISMISSAL WAS NOT SENT BY NOV 4TH
2020.

THE UNIT MANAGER IS THE ONLY
ONE ABLE TO SIGN OFF DEBIT MEMOS TO
MAIL OUT LEGAL MAIL. I CAUGHT THE
CORONAVIRUS 19 ON OCTOBER 13TH 2020

I BELIEVE MY COPY I TRIED TO SEND
OUT WAS LOST BY STAFF, THE UNIT MANAGER
I GAVE THE CIO DENNIS GARCIA ON OCTOBER
13TH TO GIVE TO THE UNIT MANAGER TO
SIGN AND MAIL OUT MY LEGAL MAIL.

THE STAFF DO NOT CARE. I'M NOT ALLOWED
TO GRIEVANCE NO WAY TO MAIL LEGAL MAIL
ONLY IN ENVELOPES 7 PAGES AT A TIME,
NOT ABLE TO SEND OUT IN MAILING ENVELOPE

I JUST FOUND OUT UNIT MANAGER HAS
CORONA VIRUS ON NOVEMBER 5TH 2020

EXHIBIT

MM

I WROTE ALL SAID ON THE DECISION
AND DISMISSAL OF THE 9TH JUDICIAL
DISTRICT COURT. TO HELP THE COURT DECIDE
MY CERTIORARI WRIT I SENT ON NOVEMBER
2ND IN TWO WHITE ENVELOPES. THANK YOU.

SUPREME COURT OF NEW MEXICO
FILED

NOV 16 2020

Sincerely,
Alberto Ramirez
P.O. Box 1034
Santa Fe, NM 87502

I TRIED to Get copy
of Decision and dismissal
But the Person who works
in legal access who makes
copies is being lazy and
ignoring my Request.

I apologise For All This.
Thank you For your help
And time God Bless.

ALBERT JOSE ROMIREZ - petitioner
VS.
State of New Mexico
Respondent

NO. D-905-CR-2007-
-00434

DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONERS MOTION TO EXPAND RECORD

- THIS MATTER HAVING COME BEFORE THE COURT UPON THE PRO SE -
PETITION FOR WRIT OF HABEAS CORPUS FILED BY THE PETITIONER ON AUGUST 18, 2020
AND THE PRO SE MOTION TO EXPAND RECORD FILED ON SEPTEMBER 24, 2020
AND THE COURT BEING FULLY ADVISED, ENTERS ITS SUMMARY DISMISSAL AND FINDS:
- ① PETITIONERS CURRENT PETITION FOR WRIT OF HABEAS CORPUS WAS FILED ON 8.18.20
 - ② A COPY OF PETITIONERS PETITION WAS SENT TO THE POST-CONVICTION HABEAS
UNIT LAW OFFICES OF THE PUBLIC DEFENDER (HEREINAFTER REFERRED
TO AS "LOPD")
 - ③ LOPD TIMELY FILED A NOTICE OF 5-802 CH)(1) PRE-APPOINTMENT REVIEW
ON SEPTEMBER 24, 2020 (HEREINAFTER REFERRED TO AS "NOTICE")
LOPD'S NOTICE IS INCORPORATED BY REFERENCE HEREINAFTER AS
THOUGH FULLY SET FORTH.
 - ④ RULE 5-802 CH)(1) PROVIDES FOR A PRE-APPOINTMENT REVIEW
OF PETITIONER'S PETITION BY LOPD. LOPD MAY RECOMMEND
THAT THIS COURT ORDER A REVISED PETITION OR MAY INDICATE
"WHETHER THE PETITION IS A PROCEEDING THAT A REASONABLE
PERSON OF CREDIBLE MEANS WOULD BE WILLING TO BRING
AT A PERSON'S OWN EXPENSE AND PROVIDE SUFFICIENT DETAIL FOR
FURTHER JUDICIAL REVIEW IF THE PUBLIC DEFENDERS
ASSESSMENT.

page 2

⑤ LOPD determined that petitioners petition is not a proceeding that a reasonable person would be willing to bring at a persons own EXPENSE.

⑥ IN thier eight (8) page Notice, Lopal notes that this is the sixth prose petition For writ of HABEAS corpus Filed by petitioners. Petitioner's previous petitions were Filed on March 22, 2017, April 25 2017, June 20, 2017, July 17, 2017, June 24, 2019. Additionally, on May 18, 2018 AN AMENDED petition For writ of HABEAS corpus was Filed on petitioners behalf by his Habeas Counsel Liane Kerr. The State Filed a response and this court held a hearing on this amended Petition. A twelve (12) page order denying petitioners petition For writ of HABEAS corpus was ENTERED on december 14 2018. Said order is incorporated by reference herein as though Fully set Forth. Also as to petitioners petition For writ of HABEAS corpus Filed on June 24, 2019, this court entered a decision and order of summary dismissal on august 12 2019. (Just six days before the INSTANT petition was filed. Said decision and order of summary dismissal is incorporated by reference herein as though Fully set. Forth. MORE OVER, Petitioner APPEARED his conviction. The NEW Mexico SUPREME COURT AFFIRMED PETITIONERS CONVICTION.

Case 2:23-cv-01075-MV-DLM Document 102-1 Filed 01/22/25 Page 1646 of 1863

7. IN their Notice, Lopa stated that the numerous issues raised by petitioners before concluding that "all of petitioners claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34570. THE ONLY additional issue raised in the instant petition is regarding petitioners Indemnity!"

8. While addressing the applicable law related to petitioners Indemnity Lopa determined that there is no evidence showing that the State knowingly used false testimony before the grand jury.

9. This court finds that Lopa provided more than sufficient detail for this court to review its assessment.

10. This court agrees with Lopa that this is not a proceeding that a reasonable person would be willing to bring at their own expense.

11. RULE 5-802 (4) NMRA STATES:

its second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have discretion to: (1) dismiss any claim not raised in a prior ~~petition~~ petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of prior petition; and

(2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claims.

Page 4

12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in petitioner's petition for writ of habeas corpus filed on August 18, 2020, that were not raised in petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.

13. Further, this Court finds that, in accordance with Rule 5-802(H)(2) any identical or similar claims that were raised in the petition for writ habeas corpus filed August 18, 2020, that were previously raised and rejected in petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of law or fact. This Court finds that the ends of ~~justice~~ justice would not be served by rehearing the claim.

14. Additionally, petitioner may not seek post conviction relief for issues raised on appeal that were decided on the merits against petitioner in State v. Gomez, 1991-NM50061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the court subsequent to the appeal. However, for the court to review the issues, the claims needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. Campos v. Bravo 2007-NM50021. In his current petition, petitioner failed to address the fact that many issues raised were the same issues decided against him on appeal.

- And failed to provide additional relevant facts.

Papers

15. ALSO, this court finds that petitioner's claim related to his indictment is not supported by fact or the record in this matter. Petitioner is not entitled to relief as a matter of law of such claim.
16. As noted above, petitioner filed motion to expand record filed on September 24, 2020. This court finds that said motion is directly related to petitioner's petition for writ of Habeas corpus filed August 18, 2020. This court fully considered the additional information and request made in said motion. The motion to expand record filed 9.24.2020 shall be denied.

Decision And Dismissal

- After examining the petition, exhibits, prior proceedings and based on the above reasons, this court finds the petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802 (1)(2)(1-2) NMRA and Rule 5-802 (6)(1) NMRA, the petition for writ of Habeas corpus filed August 18, 2020 is dismissed. Additionally the motion to expand record filed on September 24, 2020 is hereby denied.

H. S. Sigurdson

Hon. DREW. D. Tatum
District Judge.
Division II

FILED
9th JUDICIAL DISTRICT COURT
Curry County
9/24/2020 1 06 PM
SHELLY BURGER
CLERK OF THE COURT

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

No D-905-CR-2007-00434
(Hon Drew Douglas Tatum)

ALBERT RAMIREZ,
Petitioner,

vs

STATE OF NEW MEXICO,
LEON MARTINEZ, Warden,
Respondents

NOTICE OF 5-802(H)(1) PRE-APPOINTMENT REVIEW

The Post-Conviction/Habeas Unit of the Law Offices of the Public Defender provides notice to the Court and Counsel for Respondents of its review in accordance with Rule 5-802(H)(1), NMRA 2017 and states the following

- 1) The Ninth Judicial Court Clerk filed the *pro se* Petition for Writ of Habeas Corpus on August 18, 2020
- 2) The Law Offices of the Public Defender (LOPD) was served with the *pro se* Petition for Writ of Habeas Corpus by the Court Clerk on August 18, 2020
- 3) Pursuant to Rule 5-802(H)(3) NMRA, this review is timely filed on or before October 2, 2020
- 4) As per, 5-802(H)(1) LOPD has reviewed the Petition and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense¹

¹ Under the Indigent Defense Act, Sec. 31-16-3 (B)(3) a person has the limited right to appointed counsel representation in post-conviction matters "unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense" (Emphasis supplied)

Procedural History

- 1) Petitioner filed four previous *pro se* petitions for writ of habeas corpus in 2017, on March 22, 2017, April 25, 2017, June 20, 2017, and July 17, 2017
- 2) On May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr
- 3) The Amended Petition raised six issues
 - a Petitioner was denied his Sixth Amendment right to effective assistance of counsel and his right to compulsory process when his trial attorney failed to call Dr. Maxann Schwartz, Ph.D. to testify at either a competency hearing or at trial,
 - b Petitioner's convictions were obtained in violation of his state and federal right to due process and a fair trial when prior uncharged acts were introduced,
 - c Defendant's due process rights were violated when jurors observed him shackled and fall during trial,
 - d Sufficiency of the evidence,
 - e Prosecutorial misconduct for statements made during closing arguments, and
 - f Double jeopardy violation for being convicted of two counts of Tampering with Evidence
- 4) The State filed a response to the Amended Petition on September 10, 2018
- 5) A Preliminary Disposition Hearing was held on October 29, 2018
- 6) On December 14, 2018, the Court issued an Order Denying Petitioner's Petition for Writ of Habeas Corpus
- 7) Petitioner filed a fifth *pro se* Petition for Writ of Habeas Corpus on June 24, 2019 where he raised the issues of ineffective assistance of counsel from his trial counsel, appellate

- counsel, and counsel assigned to his previous Habeas Petition, Whether the trial court abused its discretion in denying Petitioner's request and demand to fire or substitute his counsel, Whether introduction of Petitioner's prior uncharged acts at trial violated his due process rights, Whether statements made by the prosecuting attorney during closing arguments and cross examination of Petitioner constituted prosecutorial misconduct
- 8) In reviewing the June 24, 2019 petition, LOPD concluded that Petitioner did not appear to assert any additional claims that he had not previously raised in prior petitions. Petitioner asserted that Ms. Kerr "failed to raise 3 or 4 issues" that Petitioner had raised in his previous pro se Petition, but it was unclear specifically which issues Petitioner believed had not been adequately addressed.

Issues and Analysis

- 9) In the instant petition, Petitioner seeks appointment of a habeas attorney to "assist him in habeas proceedings, and an evidentiary hearing to present what the jury actually saw, and allegations to be proved."

10) Petitioner raises the following issues in his *pro se* petition.

- a. Irreconcilable conflict between trial counsel and Defendant and ineffective assistance of trial counsel for

- i. Trial counsel was racist and called Petitioner a "dirty Mexican" and told him "you little stupid bitch. I hope you get life." Said I won't help you unless I took pre-trial

- ii. Failure to file motions including

1. Motion to suppress illegally obtained evidence,
2. Motion for change of venue due to the incident occurring in the small town of Clovis, and media reports stating that Petitioner

attacked the victim on prior occasions which was highly prejudicial,

3 Motion for mistrial for the jury seeing Petitioner in shackles and falling down, *cause of Petitioner me to say NO I did NO = VUPPLU,*

- iii Failure to keep Petitioner informed of plea deals, discuss strategy, and maximum sentences
- iv Failure to allow Petitioner to testify that the Victim sexually abused Petitioner, and that Petitioner was intoxicated on the date of incident
- v Failure to call witnesses including
 - 1 Pricilla Lopez (neighbor eyewitness) and Ricky Jaramillo (eye witness) in order to prove that Petitioner was the one being chased and shot Victim in self-defense,
 - 2 Petitioner's dad, Jose Ramirez to testify that Victim attacked him on two prior occasions and was aggressive,
 - 3 Petitioner's aunt, sister, brothers, and friends, and
 - 4 Doctors who treated Petitioner after an accident which resulted in mental illness, and Petitioner being placed on medications
- vi Failure to investigate family history of mental illness
- vii Failure to present insanity defense
- viii Failure to alert the Court that Petitioner was hearing voices on the day of trial
- ix Failure to raise double jeopardy defense
- x Failure to poll the jury about seeing Petitioner fall

b Due process violations for

- i Court not allowing substitution of counsel,
- ii The jury witnessing Petitioner in shackles and fall down,
- iii Evidence of prior bad acts,
- iv Improper comment on silence,
- v Invalid indictment because the grand jury proceedings incorporated hearsay from ^(SAM SAIZ) Ivan Vasquez who testified that Petitioner threatened to kill Victim, and this witness ^{he did} did not show up to trial and later wrote an affidavit recanting his statements,
- vi Double jeopardy violation

c Ineffective assistance of habeas attorneys for not arguing what he wanted, not taking into consideration his opinion, filing amended petition without sufficient time, not allowing Petitioner to speak at the disposition hearing, not meeting with Petitioner, not requesting a transcript of the closing argument, not raising the issues of sufficiency of the evidence, not raising the issue of double jeopardy on the tampering charges, and not raising the issue of prosecutorial misconduct for statements made in closing

d Ineffective assistance of appellate attorney for not asking for an evidentiary hearing

e Prosecutorial Misconduct for comment on Petitioner's legal research, and statements in closing argument regarding Petitioner's prior bad acts, and that Petitioner is a "menace to society"

SAM SAIZ
was a different
witness.
He did not
recant story
Ivan Vasquez
recanted story.

- 11) All of Petitioner's claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34579. The only additional issue raised in the instant petition is regarding Petitioner's indictment.
- 12) "[A] defendant may not seek post-conviction relief for issues raised on direct appeal that were decided on the merits against defendant." *State v. Gomez*, 1991-NMCA-061, ¶ 5, 112 N.M. 313. Petitioner does not assert that there was an insufficient record to address the matter on appeal, which would permit further review. *Id.* Petitioner failed to address the fact that the same issues were raised and decided against him on appeal. This does not provide sufficient basis for habeas review.
- 13) Pursuant to Rule 5-802(I) "Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim."
- 14) The applicable committee commentaries for the relevant 2014 amendments are as follows:
"Paragraph B(5) is amended to clarify that it applies to successive petitions for habeas relief. District courts should ordinarily dismiss petitions that do not comply with the provisions of Paragraph B(5). Paragraph H gives the district court guidance as to the handling of successive petitions for habeas relief. The standard is higher for a petitioner raising a claim rejected in a previous habeas petition than a claim rejected on direct appeal. Standard notions of claim and issue preclusion generally do not apply in habeas cases."

Campos v. Bravo, 2007-NMSC-021, ¶ 5, 141 N.M. 801, 161 P.3d 846. Courts have some discretionary capacity to dismiss habeas claims when a prior petition has been filed. According to *Duncan v. Kerby*, 1993-NMSC-011, 115 N.M. 344, 851 P.2d 466. "The rule on successive petitions focuses primarily on petitions in which the same grounds were raised and denied on the merits. See *State v. Canales*, 1967-NMSC-221, ¶10, 78 N.M. 429.

15) Petitioner raises claims of ineffective assistance of trial, appellate, and habeas counsel. The Sixth Amendment's guarantee of effective assistance of counsel applies on direct appeal as well as in the trial courts. *Welch v. Workman*, 639 F.3d 980 (10th Cir. 2011) (petitioner challenging effectiveness of counsel on appeal "must show that appellate counsel's representation fell below an objective standard of reasonableness in light of prevailing professional norms"). If appellate counsel ignores a "compelling issue" on appeal, a petitioner may prevail if, "but for counsel's unprofessional errors the result of the proceedings would have been different", i.e. the appellate proceeding. *Id.* at 1015. Petitioner must first demonstrate that counsel's performance was deficient and second that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). That is, that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

16) Regarding Petitioner's claim of an invalid indictment, pursuant to NMRA 5-302A(B) "All evidence presented shall be lawful, competent, and relevant, but the Rules of Evidence shall not apply." There is no indication that the State was aware of any false testimony at the time of the grand jury proceedings. "When the petitioner alleges that the prosecution deliberately participated in the falsification, we require the petitioner to show (1) that the original testimony was, in fact, false, and (2) that it was knowingly,

wilfully and intentionally used by the prosecution to procure the conviction” *Case v.*

Hatch, 144 N M 20, 2008-NMSC-0024 ¶8, 183 P 3d 905 (internal quotes omitted)

17) Therefore pursuant to Rule 5-802(G)(1), the Post-Conviction Habeas Unit, Law Offices of the Public Defender, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense and defers to the Court pertaining to further appropriate action

As per Rule 5-802(H)(1) NMRA 2017, undersigned counsel submits this review for the limited purpose of said procedural rule and is not Counsel of Record on this matter

I hereby certify that a copy of this notice was transmitted to Petitioner and Counsel for Respondent upon filing

/s/ Sarah Gallegos
Sarah Gallegos
LOPD Habeas

Respectfully Submitted,

/s/ Sarah Gallegos
Sarah Gallegos
Post-Conviction Habeas Unit
Law Offices of the Public Defender
505 Marquette Ave NW, Suite 120
Albuquerque, NM 87102
(505) 219-2884

THIS PAGE IS to
Be attached to petition
For writ of certiorari
Its the decision From
HABEAS corpus Filed and
denied. I sent it once
directly with habeas with
a manilla envelope But dont
better Unit MANAGE Signed
debit memo sent it out.

Please, keep this add to
two other letters. I send

Before Nov 4th 2020.

Aibito Ramirez

SUPREME COURT OF NEW MEXICO
FILED

NOV 20 2020



EXHIBIT

NN

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

FILED
9th JUDICIAL DISTRICT COURT
Curry County
10/5/2020 10:25 AM
SHELLY BURGER
CLERK OF THE COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONER'S MOTION TO EXPAND RECORD**

THIS MATTER having come before the Court upon the *pro se* Petition for Writ of Habeas Corpus filed by the Petitioner on August 18, 2020 and the *pro se* Motion to Expand Record filed on September 24, 2020, and the Court being fully advised, enters its *sua sponte* Order and FINDS

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on August 18, 2020
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on September 24, 2020 (hereinafter referred to as "Notice") LOPD's Notice is incorporated by reference herein as though fully set forth
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate

means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment."

- 5 LOPD determined that Petitioner's Petition is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
6. In their eight (8) page Notice, LOPD notes that this is the sixth pro se petition for Writ of Habeas Corpus filed by Petitioner. Petitioner's previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017, July 17, 2017 and June 24, 2019. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated by reference herein as though fully set forth. Also, as to Petitioner's Petition for Writ of Habeas Corpus filed on June 24, 2019, this Court entered a Decision and Order of Summary Dismissal on August 12, 2019 (just six days before the instant Petition was filed). Said Decision and Order of Summary Dismissal is incorporated by reference herein as though fully set forth. Moreover, Petitioner appealed his conviction. The New Mexico Supreme Court affirmed Petitioner's conviction.
7. In their Notice, LOPD addresses the numerous issues raised by Petitioner before concluding that, "All of Petitioner's claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34576. The only additional issue raised in the instant petition is regarding Petitioner's indictment."

- 8 While addressing the applicable law related to Petitioner's indictment, LOPD determined that there is no evidence showing that the State knowingly used false testimony before the grand jury.
- 9 This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment
10. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
11. Rule 5-802(H) NMRA states:

H. Second and successive petitions If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to

- (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition, and
- (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim

12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on August 18, 2020, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
- 13 Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed August 18, 2020, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of

law or fact. This Court finds that the ends of justice would not be served by rehearing the claim.

14. Additionally, Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. In his current Petition, Petitioner failed to address the fact that many issues raised were the same issues decided against him on appeal and failed to provide additional, relevant facts.

15. Also, this Court finds that Petitioner's claim related to his indictment is not supported by fact or the record in this matter. Petitioner is not entitled to relief as a matter of law on such claim.

16. As noted above, Petitioner filed a Motion to Expand Record filed on September 24, 2020. This Court finds that said Motion is directly related to Petitioner's Petition for Writ of Habeas Corpus filed August 18, 2020. This Court has fully considered the additional information and requests made in said Motion. The Motion to Expand Record filed on September 24, 2020 shall be denied.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed August 18, 2020 is DISMISSED. Additionally, the Motion to Expand Record filed on September 24, 2020 is hereby DENIED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

TO THE COURT CLERK AND
JUDGES.

ON. 10.10.2020
I SENT IN A WRIT OF
CERTIORARI. ON MY HABEAS
I DID NOT RECEIVE A
decision FROM THE COURT
could you look into this
And let me know.
Please and thank you

S. Nicely,

ALBERTO
RAMIREZ

69597
P O Box 1059
SANTA FE, NM

87504

EXHIBIT

00

SUPREME COURT OF NEW MEXICO
RECEIVED

JAN - 4 2021

A handwritten signature in black ink, appearing to be "PA" followed by a horizontal line.

I ALSO Ramirez moved to work.
ITS motion TO Charge
overdew from Leon Montanez
to Dwayne SANTIS + family
Lea county correction facility
Lea. Lea
Sincerely.

Alejo to
Ramirez
69897

EXHIBIT

PP

SUPREME COURT OF NEW MEXICO
RECEIVED

APR - 7 2021

A handwritten signature in black ink, appearing to be "J. Martinez", written over the date stamp.

1

Alberto Ramirez Gasco
6000 West Milena
Hobbs NM 88244

LUBBOCK TX 794

5 APR 2021 PM 1 L

Hasler

04/05/2021

FIRST-CLASS MAIL

US POSTAGE \$000.51



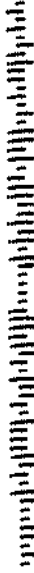
ZIP 88244
E11681499

New Mexico Court

227 don Gaspe Ave

SANTA FE, NM 87504

87501-310199




 Joey D. Moya

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2
3 **April 27, 2021**

4
5 **NO. S-1-SC-38539**

6
7 **ALBERTO RAMIREZ,**

8
9 Petitioner,

10
11 v.

12
13 **LEON MARTINEZ, Warden,**

14
15 Respondent.

16 **ORDER**

17 WHEREAS, this matter came on for consideration by the Court upon petition for
18 writ of certiorari filed under Rule 12-501 NMRA and supplemental pleadings, and the
19 Court having considered the foregoing and being sufficiently advised, Justice Barbara J.
20 Vigil, Justice C. Shannon Bacon and Justice David K. Thomson concurring;

21 NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is
22 DENIED.

23 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 27th day of April, 2021.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

By

Madeline Garcia

Chief Deputy Clerk

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

EXHIBIT

QQ

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

Motion to
Amended Petition

NMRA, Form 9-701

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

For Official Use Only

No. D-905-CR-200700434

(To be supplied by the clerk of the court)

ALBERTO J. RAMIREZ

(Full name of prisoner)

Petitioner,

v.

MR. STEPHENSON

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions -- Read Carefully

EXHIBIT

RR

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not

being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. ALBERTO RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at Lea County Jail (name of facility and county of detention) by Warden STEPHENSON (name and title of person having custody).
Lea, County, Corr. Facility.

2. This petition

[W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

[W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

SEE ATTACH PAGES. MARK PAGE

AND NUMBER. AND FACTS OF CASE

AT END OF THIS FORM ON PAPER

NOT ENOUGH SPACE TO WRITE ALL.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

See attach pages at end
of this form this Answer
not enough space to write
it all down

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

SOME SIR, TMEPUS BOOKETS OF
BARRY ON A PLACE OFFICE AND QUESTIONS
ABOUT LEGAL RESEARCH PROSECUTORIAL MIS CONDUCT
SEE PAGES AT END OF MY FORM NOT ENOUGH
SPACE TO WRITE IT ALL DOWN SIR,

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

YES DENIED AND NO FUNDAMENTAL ERROR, AND ADEQUATE
RECORD TO DEVELOPE CLAIM IN STATE COURT, AND THE END OF
JUSTICE WOULD NOT BE SERVED BY CHERISHING OR MISCONDUCT
OF JUSTICE, DENIED. BUT MR. RAMIREZ DOES NOT
BELIEVE THE STATE CLAIM AND FEDERAL CLAIMS RAISED IN
CONSTITUTIONAL TERMS AND BOTH STATE AND FEDERAL LAW. MR. RAMIREZ PROPERLY PRESENTED THEM NOW
TO BE ADDRESSED TO EXHAUST REMEDIES - SEE ATTACH PAGE

7. Briefly describe the relief requested:

THIS PETITION SEEKS TO VACATE
SET ASIDE PETITIONER'S CRIMINAL
CONVICTIONS ON THE GROUNDS THAT HE WAS DENIED HIS STATE
AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS
AND DENIED EFFECTIVE ASSISTANCE OF COUNSEL, TRIAL

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

2 TAMPERING W EVIDENCE / Homicide 1st degree murder

(a) case name:

STATE OF NEW MEXICO V. ALBERTO RAMIREZ

S.Ct. No 34,576

(b) docket number:

D-905-CR-2007-0434

(c) name of judge:

TEDDY L. HARTLEY

(d) name and location of the court in which the proceeding was held:

9th JUDICIAL DISTRICT COURT

700 N. MAIN ST CLOSIS, NM 88101

9. State the date of the final judgment, order or decree for confinement:

JAN 8th 2014. LIFE PLUS 6 YEARS

5 YEARS PAROLE IF EVER PAROLED

IN NEW MEXICO DEPARTMENT OF CORRECTIONS

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

LIFE PLUS 6 YRS. ELIGIBLE AFTER 30 YRS.

FORM 9-701, PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE COSBY P.O. BOX. 3330 ROSWELL
N.M. 88202

STEVEN J. FORBES 505 MARQUETTE AVE NW Ste
120
ALBUQUERQUE, NM 87102

AMANDA STEPHINSON
LIANE C. KERR, P.O. Box. 10491

ALBUQUERQUE, NM
87134-0491

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

SUPREME COURT OF NEW MEXICO

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(b) The case name and docket number for each appeal:

SUPREME COURT OF NEW MEXICO
 ID STATE V RAMIREZ S.O.R. NO 34,576

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

JANUARY 18th 2017 Decided
 Filed June 2014
 Don't know when Filed 2014 Decided 2016

(d) A summary of the grounds upon which each appeal was based:

INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL
 MISCONDUCT, PRIOR BAD ACTS, SHACKLES ERROR,
 COMMENT ON SILENCE, REEVALUATION COMPACTURE
 ABUSE DISCRETION

(e) The result of each appeal:

AFFIRMED SUPREME COURT
 AFFIRMED DISTRICT COURT
 guilty.

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG, SOS. MARQUETTE AVE. NW STE 120
 ALBUQUERQUE NM. 87102

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

WRIT OF HABEAS CORPUS ON
MARCH 22ND 2017, APRIL 25 2017, JUNE 20 2017, JULY 17 2017
AND 2019, MOTION FOR PROCESS, APPOINTMENT + COUNSEL
DISPOSITION HEARING, EXHIBIT RECORD, SUPPLEMENTARY
HEARING.

(b) The name and date of each case:

STATE, V. RAMIREZ JULY 2018.

(c) the docket number:

D-905-CR-2007-004741-

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) the result of each proceeding. (Attach a copy of each decision.)

..... DENIED AFFIRMED

..... DONT have all decisions, properly lost on Transport. 2022. February 22nd

(f) The issues raised in each proceeding:

..... INEFFECTIVE ASSISTANCE OF COUNSEL, prior bad acts, prosecutorial misconduct, ~~yes. Liane E Kerr~~

..... ~~A disposition hearing~~ Improper Grand Jury DENIED indictment

..... Shackles error, comment on silence, sufficiency of evidence

(g) State whether a hearing was held in connection with each of these proceedings:

..... yes. Liane E. Kerr. A

..... disposition hearing

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

..... yes. disposition hearing. SHE did not

..... speak to me, or listen to me. Did I have to pay for Liane E Kerr. Albuquerque, NM. Long distance calls. P.O. Box. 10491. 87184-0491

19. Do you seek the appointment of counsel to represent you?

☒ Yes

___ No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF CURRY

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On 19 Dec 2022 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th Judicial Court District
___ Court (name of court)

Clouse
___ (city), New Mexico, 88101 (zip code).

(
Signature ALBERTO JOSE RAMIREZ
)

(
Address 6900 West Miller
HOBBS, NM 88244
)

PNM No., if applicable
SUBSCRIBED AND SWORN TO before me this 13th day of December, 2022, by

(Name of petitioner) ALBERTO J. RAMIREZ

Notary Public

Demetrie Young

STATE OF NEW MEXICO
NOTARY PUBLIC
DEMETRIE YOUNG
COMMISSION # 1128542
EXPIRES APRIL 13, 2024

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

April 13, 2024

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by Mail (describe manner of service), this 19 day of December, 2022.

(
Signature of petitioner A. GREGO J. RAMIREZ
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

- 1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.
- 2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through August 1, 2017.

End of Document

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PAGE 3 PART A

QUESTION 5

- B.) MR. RAMIREZ RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL
- C) THERE WAS IMPROPER COMMENTARY ON MR. RAMIREZ RIGHT TO SILENCE
- D) MR. RAMIREZ WAS PREJUDICED BY JURY SEEN HIS RESTRAINTS
- E) THE COURT ABUSED ITS DISCRETION BY NOT DECLARING A MISFEASANCE ACTS.
- F) PROSECUTORIAL MISCONDUCT
-

APPELLATE ATTORNEY REFUSED TO ARGUE PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT AND PERJURY THAT WAS FUNDAMENTAL ERROR, PERSUASIVE, PREJUDICIAL, EGREGIOUS, PROSECUTOR CLAIMED MR. RAMIREZ WAS CLAIMED MR. RAMIREZ WAS A LIAR, MALINGERER, AND MANIPULATOR, AND MENACE TO SOCIETY THE COMMUNITY AS A WHOLE AND INTRODUCED EVIDENCE COMMENT IN VIOLATION OF RULE 11-404 NMRA AND R. EVID SERV. 11-404 B AND RULE 11-404 IT WAS STILL USED NOTE OF SHOOTING NIGGAS AND HIGHLY PREJUDICIAL BLACK JURY, ALSO PRIOR BADS ACTS AND UNCHARGED CONDUCT DWELLED ON AMOUNTED TO PROSECUTORIAL MISCONDUCT HABEAS ATTORNEY REFUSED TO ARGUE THIS OR FACT SHERIFF MANIPULATED MR. RAMIREZ BY GESTURING HAND, FINGER, MOUTH NO HE DID NOT FALL WHEN ASKED BY JUDGE. SHERIFF SOCIETY, PROSECUTOR FROM THIS OBSTRUCTION OF JUSTICE, IN HIS APPEAL WITHOUT CASE LAW FEDERAL AND STATE

③ NO BECAUSE HABEAS ATTORNEY AMANDA STEPHENSON HAD MY CASE FOR - 5 MONTHS AND DID NOTHING THEN CONFLICT OF INTEREST SHE KNEW I WANTED TO CLAIM INEFFECTIVE ASSISTANCE OF APPELLATE ATTORNEY SINCE AUGUST 2017, THEN NEW HABEAS ATTORNEY LIANE E. KIRK HAD ONLY ONE MONTH REFUSED TO SET FORTH CONTENTIONS THAT MR. RAMIREZ WANTED THAT HAD MERIT BECAUSE SHE HAD ONLY 30 DAYS AND COULD NOT FULLY MEET WITH MR. RAMIREZ AND WAS TO BUSY PRIVATE ATTORNEY FILED PETITION WITHOUT ANY OF MY IMPORTANT ISSUES, CLAIMS CASE LAW STATE AND FEDERAL LAW AND VIOLATION OF DUE PROCESS STATE AND FEDERAL. SHE DID RAISE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL I ASKED HER TO, AND PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT AND PERJURY, ~~PERJURY~~ THAT MR. RAMIREZ WAS A LIAR AND MANIPULATOR AND MALINGERER AND MENACE TO SOCIETY AND COMMUNITY, NONE OF MY STATE AND FEDERAL CASES, OR VIOLATION OF MY DUE PROCESS OF RIGHT TO FAIR TRIAL BY PROSECUTOR, ALSO DID NOT RAISE ISSUE ABOUT ERRONEOUSLY ADMITTED EVIDENCE IN CROSS EXAMINATION OF LITTO RAMIREZ WROTE ABOUT SHOOTING NIGGAS, JACKY NIGGAS, HAND TO JURORS THAN EXCLUDED ~~AND~~ UNDER RULE - 403 NMRA AND GROSSLY ADMITTED UNDER RULE 11-404 B NMRA, R. EVID SERV. 11-404 B DEPRIVED MR. RAMIREZ OF FORNERS OF FUNDAMENTAL FAIRNESS OF DUE PROCESS STATE AND FEDERAL.

~~② ~~NO OBJECTION FROM TRIAL COUNSEL~~~~
~~③ ~~PROSECUTORIAL MISCONDUCT DURING CROSS EXAMINATION~~~~
 ④ PROSECUTORIAL MISCONDUCT DURING CROSS EXAMINATION, BUT NO REVERSAL AND IN CLOSING ARGUMENT BUT NO OBJECTION, IT WAS EGRIGIOUS, PERSUASIVE, AND PREJUDICIAL AND IMPERMISSIBLE, COMMENT ON CHARACTER, AND CREDIBILITY, BAD ACTS ATTACK, EXCLUDED EVIDENCE IN VIOLATION OF RULE 11-404 - NMRA - R. EVID Fed 11-404B. APPELLATE ATTORNEY REFUSED TO RAISE ISSUE SAID DO IT IN HABEAS, HABEAS ATTORNEY SAID DO IT MYSELF OTHER HABEAS ATTORNEY WON MY CASE 3 MONTHS AND DID NOTHING 2 EXTENSIONS. 90 DAYS. PROSECUTOR CLAIMED MR. RAMIREZ WAS A LIAR, MANIPULATOR, MAFIOSO, A MENACE TO SOCIETY IMPROPER CHARACTER COMMENT, AND IMPROPER REMARK ON DEFENDANT'S TESTIMONY AND LEGAL RESEARCH MR. RAMIREZ HAD DONE MENTIONED IN CROSS EXAMINATION NO MISTRIAL GRANTED, EGRIGIOUS, PERSUASIVE, AND PREJUDICIAL AND IMPERMISSIBLE COMMENT ON CHARACTER, AND CREDIBILITY AND BAD ACTS AND UNCHARGED CONDUCT, AND EVIDENCE ADMITTED ERRONEOUSLY IN CROSS EXAMINATION ^{ADMITTED} ^{OVER} ^{CORRECTION} MR. RAMIREZ OBJECTION TO NOTE ABOUT JACK YAN MYGAZ, BLAS YAN MYGAZ ADMITTED IN VIOLATION OF RULE 11-404B AND R. EVID SERV. 11-404 AND THEN EXCLUDED AFTER RECALL TO JURY AND THEN USED AGAIN BY PROSECUTOR IN CLOSING ARGUMENT + STATEMENT MR. RAMIREZ WROTE NOTE EXPRESSED THOUGHTS OF MURDER BEFORE MURDER HAPPENED. NO OBJECTION MADE IN VIOLATION OF RULE 11-403 NMRA AND R. EVID SERV 11-404, 11-403. FUNDAMENTAL ERROR OCCURRED THIS DEPRIVED MR. RAMIREZ OF HIS STATE AND FEDERAL DUE PROCESS RIGHTS TO A FAIR TRIAL PROTECTED BY 6TH AND 14TH AMENDMENT AND N.M. ACT CONST AND U.S. ACT CONST. EN.M STATE AND FEDERAL LAW.

Ground 5) JUST OBSERVED MR. RAMIREZ IN SHACKLES. DENIED
APPELLATE ATTORNEY AND HABEAS ATTORNEY REFUSED TO
RAISE ISSUE. I FELT LIKE I WAS CALLED TO SHERIFF
DOCKETY. I FAV STAYED ON GROUND 10-15 SECONDS AND
LOOKED AT EVERYONE THE COURT MONITOR, SHERIFF, AND THE
JUDGE AND PROSECUTORS AND MY LAWYER, AND IY SUCCEEDED
TO TABLE AND JUDGES SEEN IEG SHACKLED TO TABLE
AND THE TABLE MOVE AND THE FALL. WHEN THE JUDGE
SAID DID YOU FALL. I SAID YES THEN NO BECAUSE
I SEEN SHERIFF SAYING NO GESTURING WITH MOUTH AND
FINGER, AND HEAD, MY ATTORNEY SAID HE FELT, PROSECUTOR
SAID NO, MR. RAMIREZ WAS MANIPULATED BY SHERIFF
DOCKETY TO SAY NO ~~SHERIFF~~ PROSECUTOR SEEN HERE
OBSTRUCTION OF JUSTICE APPPELLATE ATTORNEY NUR
HABEAS ATTORNEY ARGUED THESE FACTS AND MR ~~RAMIREZ~~
RAMIREZ WAS DENIED HIS 5TH AND 6TH AND 14TH
AMENDMENT RIGHT TO FAIR TRIAL 1A VIOLATION
OF STATE AND FEDERAL DUE PROCESS TO A FAIR TRIAL
PROTECTED BY 14TH, 5TH, 14TH AMENDMENT. N.M. ART CONST,
U.S. ART CONST. AND ~~STATE~~ NEW MEXICO
AND FEDERAL LAW, MR RAMIREZ WAS PREJUDICED
HIS CONSTITUTIONAL RIGHTS VIOLATED.

G and S

of N.M. ART CONST, And U.S. ART CONST.

Violated. State ^{of} ~~and~~ N.M. And Federal Law.

MR. RAMÍREZ HAS AFFORDED THE STATE COURT A FAIR OPPORTUNITY TO APPLY CONTROLLING FEDERAL LAW PRINCIPLES TO THE FACTS HEARING UPON CONSTITUTIONAL CLAIMS. MR. RAMÍREZ HAS MADE EFFORT TO JOIN THE CLAIMS AND HAS PRESENTED THE STATE COURT WITH THE OPERATIVE FACTS AND CITED PERTINENT FEDERAL AND STATE CASES. HE'S MADE EFFORT TO JOIN THE TWO. INEFFECTIVE ASSISTANCE OF FEDERAL AND

two. Ineffective Assistance of
Appellate Attorney and Shackles Error
Ground (c) No Objection during closing Argument; Rebuttal
Prior Bad Acts Introduced and Conviction
Obtained in violation of his State and Federal Rights
to due process and a fair trial protected by 6th
Amendment and 14th Amendment. And N.M. Art Const,
And U.S. Art Const. When Prior Misconduct And
Uncharged Acts Introduced Absent a Balancing Analysis
Under Rule 404(B) NMRA And R. Evid. SERV 404
And violation of Rule 11-403 NMRA, Erroneous Exclusion
Admission Evidence that rendered his trial fundamentally
unfair violates due process Item 302 State Exib. +
110 was admitted in violation of these rules then found
Note then excluded they used impermissible comments of this
evidence in closing Argument Rebuttal in violation of
these rules, resulted in denial of constitutional
trial proceedings. NEVER mentioned by Appellate
Attorney or Habeas Attorney in those proceedings.

Grunds.

⑥ Prior BAD ACTS, YES by APPELLATE ATTORNEY
AND HABEAS ATTORNEY ONLY THE SAME 3 PRIOR
BAD ACTS. NOT ALL THE ISSUES I REQUESTED
WHICH HAD MERIT. PRIOR BAD ACTS IN
CROSS EXAMINATION AND CLOSING ARGUMENT AND
REBUTTAL WHICH MR. RAMIREZ BELIEVES WAS SO
PERSUASIVE AND ~~THE~~ PERSISTENT AND SEVERE WHICH
~~THE~~ AMOUNTED TO PROSECUTORIAL MISCONDUCT AND
VIOLATED HIS STATE AND FEDERAL RIGHTS TO DUE PROCESS
~~AND A FAIR TRIAL~~ PROTECTED BY 6TH AMENDMENT
AND 14TH AMENDMENT. N.M. ART CONST. AND U.S. ART
ART. & CONST. IN VIOLATION OF NEW MEXICO STATE
AND FEDERAL LAW. EVIDENCE WAS ERRONEOUSLY ADMITTED
IN VIOLATION OF RULE 11-403 NMRA, AND RULE
11-404 NMRA. AND RULE R. EVID. SERV 11-404
ITEM 302, STATES EXHIBIT 110 NOTE ABOUT SHOOTING NIGGAZ,
JACKSON NIGGAZ, ADMITTED OVER OBJECTION AND READ TO
JURY THEN EXCLUDED, THEN IMPERMISSIBLE USED BY
PROSECUTOR IN CLOSING ARGUMENT SAID MR. RAMIREZ
WROTE ABOUT SHOOTING PEOPLE, HE EXPRESSED THOUGHTS
OF MURDER BEFORE MURDER HAPPENED. NO OBJECTION?
BY TRIAL COUNSEL NOT ARGUED IN APPEAL OR HABEAS BY
HABEAS ATTORNEY, ALSO INTRODUCED EVIDENCE
ERRONEOUSLY IN VIOLATION OF ~~HABEAS~~ ADMITTED RULE - 11-403,
AND RULE 11-404 NMRA AND RULE ~~AND~~ R. EVID
SERV. 11-404. FACTS.

NO objection by trial ATTORNEY
 PROSECUTOR used prior bad acts IN closing
 Argument AND Rebuttal, photographs of JS OF
 deceased NO probative value manner of death
 NOT IN dispute, AND pictures of MR RAMIREZ
 WITH UNKNOWN Black male gang writing IN
 Background AND said his NICK NAME IS WEASEL
 SUGGEST INVOLVEMENT IN A gang other CRIMINAL
 Activity. Pictures NOT used to Identify RAMIREZ
 BY ANY witness, this photos of deceased AND
 RAMIREZ used only to prejudice the defendant
 INFLAME jurors prejudice AGAINST defendant.
 This deprived MR RAMIREZ of his STATE
 AND Federal due process AND 6th Amendment
 protected BY 14th Amendment RIGHT TO A
 FAIR trial. N.M. Art. CONST. AND U.S. Art. CONST
 AND NEW MEXICO AND Federal LAWS ~~VIOLATED~~
 VIOLATED.

- ⑦ INVALID GRAND JURORS INDICTMENT NO APPELLATE AND HABEAS ATTORNEYS REFUSED TO RAISE CLAIM ~~EXEMPT FROM~~ EVEN THOUGH I ASKED THEM TO AND RAISED BY MR. RAMIREZ IN HABEAS BUT DENIED AS NOT RAISED IN PREVIOUS PETITION.
- ⑧ COMMENT ON SILENCE YES DENIED. BUT NOT REQUEST IT VIOLATED STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND PROTECTED BY 5TH AND 14TH AMENDMENT. DEPUTY PROSECUTOR STATED I ATTEMPTED TO GET A STATEMENT. OBJECTION. JUDGE DENIED.
- ⑨ SUFFICIENCY OF EVIDENCE YES, ONLY BY MYSELF AND HABEAS ATTORNEY AND APPELLATE REFUSED TO DO IT ON HABEAS.
- ⑩ DOUBLE JEOPARDY. APPELLATE ATTORNEY REFUSED TO DO IT ON HABEAS, HABEAS DID BUT DENIED.

FACTS OF THE CASE

Petitioner, Eighteen year old ALBERT RAMIREZ Sometimes resided with his mother, Pedro Ramirez and stepfather, Ricardo Robledo at their home in Clovis, New Mexico. Some of his belongings remained at the residence when he was ordered to ~~leave~~ leave the home due to a disruption with his stepfather. When about Ramirez returned to the home to collect some of his belongings on July 12th 2007. He argued with his father and testified he had been attacked by his stepfather. He asserted the attack was more threatening because of his physical circumstances, and he was aware deceased owned a gun and threatened to use it.

~~He had seen something in deceased's hands~~

He had seen something in deceased's hands at the time of incident and that there were two distinct episodes of confrontation as evidence was located in front of a garage and near a car in front of house. He explained his loss of his shoes, and clothing at the scene as the deceased's actions in assaulting him and his efforts to leave. And petitioner stated he feared for his safety.

MR. RAMirez shot and killed RUIZ.

This was witnessed by two people -
 SAM SAIZ, JR. and another person GRACE FINNEY.
 During the investigation, law enforcement
 located petitioners ~~at~~ shorts, in a dumpster
 several blocks from scene. No firearm
 located. Jail calls interpreted where petitioner
 directed his cousin to an area to remove
 BAM, BAM. Something petitioners admitted
 was a gun that he used in self defense
 during the shooting.



STATEMENT OF FACTS / PROCEDURAL HISTORY

PETITIONER WAS INDICTED ON JULY 20, 2007 AND CHARGED WITH FIRST DEGREE MURDER AND TWO COUNTS OF TAMPERING COUNTS RUNNING CONCURRENT TO THE LIFE SENTENCE.

MR. RAMIREZ MOVED TO WITHDRAW HIS PLEA ON FEBRUARY 25, 2009. A MOTION THE TRIAL COURT HEARD ON JUNE 25TH 2009. BUT DENIED ON JULY 29, 2009. FOLLOWING AN APPEAL OF THE DENIAL TO WITHDRAW PLEA, THE NEW MEXICO SUPREME COURT REVERSED THE DENIAL ON JULY 6TH 2011. AND REMANDED FOR A TRIAL ON THE MERITS WHICH WAS ULTIMELY HELD ON

OCTOBER 7-11, 2013 WHERE JURORS WERE INSTRUCTED TO FIND 1ST DEGREE MURDER AND PETITIONER WAS FOUND GUILTY OF 1ST DEGREE MURDER. ALTHOUGH PETITIONER'S PLEA EXPOSED HIM TO A LIFE SENTENCE ONLY, FOLLOWING TRIAL, PETITIONER WAS SENTENCED TO THE LIFE SENTENCE AND EACH TAMPERING COUNT CONSECUTIVELY, LEAVING HIM AN ADDITIONAL SIX YEARS FOR A TERM OF LIFE PLUS SIX YEARS.

MR. RAMIREZ ADDITIONALLY

REQUEST THE FOLLOWING COURT TO
CONSIDER ADDITIONAL ISSUES
WHICH WERE IN HERDENT IN HIS
TRIAL, BUT WHICH WERE NOT
RAISED BY HIS APPEALATE
ATTORNEY. OR HIS HABEAS ATTORNEY.

SEE STATE V. FRANKLIN, 78. N.M. 127,
428 P.2d. 982 (1964) AND STATE V.

BOYER, 103 N.M. 655, 712 P.2d.

1 (Cot. App 1985) COUNSEL SHOULD

SET FORTH CONTENTIONS URGED
BY PETITIONER WHETHER OR NOT
COUNSEL FEELS THEY HAVE MERIT.

MR. RAMIREZ ASKS THIS
COURT TO CONSIDER THE
FOLLOWING IN THE CONTEXT
OF THE ENTIRE TRIAL

See ~~machibroda~~ machibroda v. UNITED STATES.

368 U.S. 487 (1962); SEE

ALSO DUNCAN V. KERRY, 1993 - NMSC -
011, 93, 115 N.M. 344.

(13)

R.R.

~~1990~~ DUNCAN, 1993 NMSC-2011-4
CONSEQUENTLY, WHEN A PETITION
FOR A WRIT OF HABEAS CORPUS
ALLEGES PARTICULAR FACTS SET OUT
A CLAIM OF INADEQUATE
REPRESENTATION, THE PETITIONER
IS ENTITLED TO A HEARING.
STATE. V. MOSER, 1967 -
NMSC-163, 6, 78, N.M. 212.
(OVERRULED ON OTHER GROUNDS)

14
page 18

CONCLUSION

IF A PETITION FOR WRIT OF HABEAS CORPUS DEMONSTRATES ON ITS FACE THAT A PETITIONER MAY HAVE BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS, THE COURT MUST ADDRESS THE ISSUE IN AN EVIDENTIARY HEARING UNLESS IT PLAINLY APPEARS THAT THE PETITIONER IS NOT ENTITLED TO ANY RELIEF AS A MATTER OF LAW, BASED ON FACTS ALLEGED IN THE PETITION, OR THE UNCONTROVERTED FACTS SHOWN BY THE COURT RECORD. STATE. V. FRANKLIN, 1967-NMSC-151, 6, 78, NM 127, quoting machibroda V. UNITED STATES, 368 U.S. 487 (1962); see also duncan, v. KERRY, 1993-NMSC-011, 3, 115, NM 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel.) HABEAS CORPUS PROCEEDINGS ARE THE PREFERRED METHOD FOR ADJUDICATING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE SUCH CLAIMS OFTEN CANNOT BE CONSIDERED BASED SOLELY ON THE RECORD BEFORE THE TRIAL COURT.

West's New Mexico Statutes Annotated
State Court Rules
9. Criminal Forms
Article 7. Special Proceedings

*Motion to
Annul Petition*

NMRA, Form ~~9-701~~

FORM ~~9-701~~ PETITION FOR WRIT OF HABEAS CORPUS

Currentness

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF CURRY
IN THE DISTRICT COURT

NINTH JUDGE
CURRY COUNTY, NM
FILED IN CIVIL OFFICE
2022 DEC 27 AM 8:07
CLERK DISTRICT COURT
KEVIN SPEARS

For Official Use Only

No. D-905-CR-200700434

(To be supplied by the clerk of the court)

LIBERTO J. RAMIREZ

(Full name of prisoner)

Petitioner,

v.

MR. WARDEN STEPHENSON

(Name of warden, jailor or other person having power to release the petitioner)

Respondent.

Instructions -- Read Carefully

Make sure that all information provided in this form is true and correct. Make sure that all necessary documents are attached, or explain why the documents are not

being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. ALBERTO RAMIREZ (name of person in custody) is imprisoned or otherwise restrained at LECF (name of facility and county of detention) by WARDEN STEPHENSON (name and title of person having custody).
LEA COUNTY CORRECTIONAL FACILITY

2. This petition

[W] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, or other matters relating to the trial or sentence the confined person received).

[W] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. (This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole).

3. State concisely the facts upon which the confined person bases the claim:

SEE ATTACH PAGES. FACTS
AT END OF THIS FORM
ON PAPER NOT ENOUGH
SPACE TO WRITE IT ALL.

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

SEE ATTACH PAGES AT END
OF THIS FORM FOR THIS ANSWER.
NOT ENOUGH SPACE TO WRITE
IT ALL DOWN.

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

SOME, SIR - IMPROPER BAD ACTS OF
BATTERY ON PEACE OFFICER AND QUESTION REGARDING
LEGAL RESEARCH PROSECUTORIAL MISCONDUCT
SEE PAGES AT END OF THIS FORM NOT ENOUGH
SPACE TO WRITE IT ALL DOWN SIR.

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

YES, SIR. I DONT UNDERSTAND QUESTIONS HERE
SIR I BELIEVE YES AND DENIED, BUT
SEE PAGES END OF THIS FORM
FOR MORE DETAIL INFORMATION
ABOUT THIS SIR.

7. Briefly describe the relief requested:

THIS PETITION SEEKS TO VACATE
SET ASIDE PETITIONERS CRIMINAL
CONVICTIONS ON THE GROUNDS THAT HE WAS DENIED HIS STATE
AND FEDERAL AND U.S. AND NM CONSTITUTIONAL RIGHTS
TO DUE PROCESS VIOLATED AND DENIED SM, 611,
14 CONST. ART. AMENDS. DENIED EFFECTIVE ASSISTANCE
OF TRIAL AND APPELLATE ATTORNEY ON APPEAL.

REQUESTS
HABEAS ATTORNEY APPOINTED TO HELP FILE
PETITION CORRECTLY. DISCOVERY GRANTED, AND
EXPAND RECORD, ADD EVIDENCE, EVIDENTIARY OR
DISPOSITION HEARING GRANTED.

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

1st degree HOMICIDE murder, 2 TAMPERING w/ EVIDENCE

(a) case name:

STATE OF NEW MEXICO, V. ALBERTO J. RAMIREZ
Sect. NO 34, 576

(b) docket number:

D-905-CR-2007-0434

(c) name of judge:

TEDDY L. HARTLEY

(d) name and location of the court in which the proceeding was held:

9th JUDICIAL DISTRICT COURT
700. N. MAIN ST. CLOVIS, N.M., 88101

9. State the date of the final judgment, order or decree for confinement:

JAN 8th 2014 - LIFE PLUS 6 YEARS
YEARS PAROLE IF EVER PAROLED
IN NEW MEXICO DEPARTMENT OF CORRECTIONS.

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

LIFE PLUS 6 YRS. ELIGIBLE AFTER 30 YRS

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JEFF COBY P.O. Box. 3330 Roswell
N.M. 88202

STEVEN J. FORSBERG 505 MARQUETTE AVE
N.W. STE 120 ALBUQUERQUE N.M. 87102

AMANDA STEPHENSON
LIANE C. KERR, P.O. Box. 10491, ALBUQUERQUE
87104 - 0491

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

SUPREME COURT OF NEW MEXICO

(b) The case name and docket number for each appeal:

SUPREME COURT OF NEW MEXICO

IN STATE V. CAMERON S.Ct. NO. 34,576

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

JANUARY 18th 2017 Decided

filed June 2014

Don't know when filed 2014 Decided ~~2016~~ 2016

(d) A summary of the grounds upon which each appeal was based:

INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL MISCONDUCT, PRIOR BAD ACTS, SHACKLES ERROR, COMMENT ON SILENCE. REEVANATION COMPLEXITY

(e) The result of each appeal:

N.M

AFFIRMED DENIED SUPREME COURT

Affirmed denied 9th Judicial District Court

Guilty of ALL CHARGES.

(f) The name and address of the attorney on appeal:

STEVEN JO FORBERRY, 503 MARQUETTE AVE. N.W.
STE. 120 ALBUQUERQUE N.M. 87102

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

WRIT OF HABEAS CORPUS ON
3-22-17, 4-29-17, 6-20-17, 7-17-17 And 2018,
2020 AND ~~2021~~ DISPOSITION HEARING DENIED

(b) The name and date of each case:

STATE V. RAMIREZ JULY 2018

(c) the docket number:

D-905-CR-2007-00474-

(d) the court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) the result of each proceeding. (Attach a copy of each decision.)

DENIED AFFIRMED

DONT HAVE ALL DECISIONS, PROPERTY LOST ON
TRANSPORT 2-23.22

(f) The issues raised in each proceeding:

INEFFECTIVE ASSISTANCE OF APPELLATE ATTORNEY
TRIAL COUNSEL, HABEAS ATTORNEY, PRIOR BAD ACTS
PROSECUTORIAL MISCONDUCT, INVALID GRAND JURY
INDICTMENT, SHOCKING ERROR, COMMENT ON SILENCE, SUFFICIENCY OF
EVIDENCE, DOUBLE JEOPARDY.

(g) State whether a hearing was held in connection with each of these proceedings:

YES. LIANE E. KERR

A DISPOSITION HEARING. DENIED.

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

YES DISPOSITION HEARING. SHE DID NOT SPEAK TO ME
OR LISTEN TO ME. SAID I HAD TO PAY FOR LONG DISTANT CALLS.
LIANE E. KERR. P.O. BOX ALBUQUERQUE, N.M.
87184-0471

19. Do you seek the appointment of counsel to represent you?²

☒ Yes

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

 No

VERIFICATION

STATE OF NEW MEXICO

COUNTY OF CURRY

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On 19 DEC 2022 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th JUDICIAL COURT DISTRICT
 Court (name of court)

CLARK
 (city), New Mexico, 88101 (zip code).

(
 Signature ALBERTO JOSE RAMIREZ
)

(
 Address 6900 WEST MILLER
HOBBS, N.M. 88244
)

PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 13th day of December, 2022 by

(Name of petitioner) ALBERTO J. RAMIREZ

Notary Public

Demetrie Young

STATE OF NEW MEXICO
 NOTARY PUBLIC
 DEMETRIE YOUNG
 COMMISSION # 1128542
 EXPIRES APRIL 13, 2024

FORM 9-701. PETITION FOR WRIT OF HABEAS CORPUS, NM R CR Form 9-701

April 13, 2021

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition were served upon the respondent and the district attorney in the county in which the petition is filed by MAIL (describe manner of service), this 19 day of December, 2022

(
Signature of petitioner A. GARCIA J. RAMIREZ
)

USE NOTE

Credits

[Adopted effective Aug. 1, 1989. Amended effective May 6, 2009; Dec. 31, 2014.]

Footnotes

- 1 After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.
- 2 Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA

NMRA, Form 9-701, NM R CR Form 9-701

State court rules are current with amendments received through August 1, 2017.

End of Document

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PAGE 3 PART 1

- QUESTION 5 ~~THE~~ ONLY legal argument regarding the denial of recross motions
- ⑧ MR. RAMIREZ RECEIVED INADEQUATE ASSISTANCE OF COUNSEL
 - ⑨ THERE WAS IMPROPER COMMENTARY ON MR. RAMIREZ'S RIGHT TO SILENCE
 - ⑩ MR. RAMIREZ WAS PREJUDICED BY THE JURY SEEING HIS RESTRAINTS
 - ⑪ THE COURT ABUSED ITS DISCRETION BY NOT DECIDING A MISFEASANCE EVIDENCE OF BATTERY ON POLICE OFFICER PROSECUTORIAL MISCONDUCT ^{BRUTALITY} ^{WITNESS} IMPROPER AN SVSC CLAIM

IF NOT EXPLAIN WHY NOT, MR. RAMIREZ ADDITIONALLY REQUEST NOW AND TIME OF APPEAL COURT TO CONSIDER ADDITIONAL ISSUES WHICH WERE INHERENT IN HIS TRIAL, BUT WHICH WERE NOT RAISE BY HIS APPELLATE ATTORNEY, OR HIS HABEAS ATTORNEY OR COLLECTORIAL ATTORNEY.

- ① INEFFECTIVE ASSISTANCE TRIAL COUNSEL DID NOT OBJECT TO EGREGIOUS, PRESUMPTIVE, PRESUMPTIVE PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT IN CLOSING ARGUMENT AND REBUTTAL AND DEPRIVED MR. RAMIREZ OF STATE AND FEDERAL RIGHT TO DUE PROCESS RIGHT TO A FAIR TRIAL, PROTECTED BY THE 14TH AMENDMENT AND 6TH AMENDMENT RIGHT TO A FAIR TRIAL, N.M. AND FEDERAL LAW AND N.M. ART. CONST., U.S. ART. CONST. TRIAL COUNSEL PROMISED IF MR. RAMIREZ TESTIFIED HE WOULD BE ABLE TO SPEAK OF SEX ABUSE AND COUNSEL FAILED TO CALL WITNESSES, DR. FINK, DR. BURNES, DR. SWARTZ TO TESTIFY OF SEXUAL ABUSE AND FAILED TO FILE A MOTION FOR CHANGE OF VENUE AND SUPPRESS EVIDENCE ITEM 302 EXHIBIT 110 NOTE FOUND IN CAR, A FAIR MOTION FOR MISFEASANCE ASKED HIM 2-3 TIMES AFTER FELL DOWN HE SAID TO LATE

- ② ~~APPELLATE COUNSEL SAID HE HAD TO ARGUE THIS ON A HABEAS HE REFUSED ATTORNEY TO ARGUE CONTENTIONS SET FORTH CONTENTIONS URGED BY MR. RAMIREZ AND OBJECTED TO BY TRIAL COUNSEL IN CROSS EXAMINATION EVIDENCE EXHIBIT ADMITTED IN VIOLATION OF RULE 11-404 N.M.R.A., AND R. EVID. SEEN RULE 404 EXHIBIT 110 AND ITEM 302 NOTE ABOUT SHOOTING MISCAR AND MR. RAMIREZ READ NOTE THEN EXCLUDED BY JUDGE THEN USED AGAIN IMPERMISSIBLE REPEATED IN CLOSING ARGUMENT & REBUTTAL JUDGE EXCLUDED THIS UNDER RULE 11-403 N.M.R.A. STILL USED IN CLOSING ARGUMENT AND REBUTTAL~~

① INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL PROMISED IF MR RAMIREZ TESTIFIED he would be ABLE to SPEAK OF SEX ABUSE FROM STEPHEN AND NUBER SAMSALZ, FAILED TO CALL DR. MAXINE SWARTZ, DR. FUNK, DR. BURNES TO TESTIFY OF MY COMPETENCY, MENTAL ILLNESS, AND SEXUAL ABUSE. FAILED TO FILE MOTION FOR CHANGE OF VENUE WHERE THERE WAS HIGHLY PREJUDICIAL NEWS OF MR RAMIREZ ATTACKING VICTIM OR PRIOR ACCUSINGS, BATTERY ON POLICE OFFICERS, AND THREATS TO HIS MOM AND SHEEP FATHER NEW PROVEN IN COURT. THE THREATS. FAILED TO FILE MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED FROM CATILAN NOTE WRITTEN BY ALBERTO RAMIREZ SAYING IT BIAST YAK NISSAR IN JACK YAK NISSAR READ TO JUDGES OUR OBJECTION THEN EXCLUDED THEN USED IN CLOSING ARGUMENT PROSECUTOR SAID MR RAMIREZ WROTE LETTER EXPRESSED THOUGHTS OF MURDER BEFORE MURDER HAPPEND IN VIOLATION OF RULE - 11-403 AND ERRONIOUSLY ADMITTED IN VIOLATION OF RULE 11-404 THIS WAS SO EXTREME IT DEPRIVED MR RAMIREZ OF A FAIR TRIAL AND THE FUNDAMENTAL UNFAIRNESS OF PROCEEDINGS VIOLATE HIS STATE AND FEDERAL RIGHTS TO DUE PROCESS AND PROTECTED BY 6TH AMENDMENT AND 14TH AMENDMENT, N.M. ART CONSTIT, US ART CONSTIT N.M. STATE LAW AND FEDERAL LAW VIOLATED.

FAILED TO FILE THAT MR. RAMIREZ FELL DOWN AFTER JUDGE ASKED RAMIREZ SAID YES THEN NO BARE SHERIFF ASKED MANY MANIPULATED HIM TO SAY NO BY GESTURES SUCH AS HEAD NODDING, AND SO HE SAID NO HE DID NOT FALL ABOUT. HE TOLD COUNSEL THIS 2-3 TIMES BEFORE TRIAL ENDED. HIS CONVICTION WAS OBTAINED IN VIOLATION OF STATE AND FEDERAL DUE PROCESS, PROTECTED BY 5TH AND 14TH AMENDMENT.

PAGES PAGE 5 PART 3 PART OF 2 AND 3, APPROPRIATE COUNSEL ATTORNEY
 QUESTION 5 PART OF 2 APPROPRIATE COUNSEL ATTORNEY
 IF NOT EXPLAIN WHY NOT, MR. RAMIREZ ADDITIONALLY REQUEST 2A3A
 NOW AND TIME OF APPEAL COURT TO CONSIDER ADDITIONAL ISSUES
 WHICH WERE IMMINENT IN HIS TRIAL BUT WHICH WERE NOT USED RAISED
 BY HIS APPELLATE ATTORNEY OR HIS HONORABLE ATTORNEY IN COLLECTED
 REVIEW. Egregious, PERSUASIVE PREJUDICIAL MISCONDUCT INCLUDING
 OBJECT TO Egregious, PERSUASIVE PREJUDICIAL MISCONDUCT INCLUDING
 ARGUMENT AND REBUTTAL AND DEPRIVED MR. RAMIREZ OF STATE AND FEDERAL
 RIGHT TO DUE PROCESS RIGHT TO A FAIR TRIAL, PROTECTED BY THE 6TH AND 14TH
 AMENDMENT RIGHT TO A FAIR TRIAL. N.M. - ACT COURT. U.S. DISTRICT COURT.

NO OBJECTION FROM TRIAL COUNSEL ON ERRONEOUSLY ADMITTED IN
 VIOLATION OF RULE 11-403 NMRA AND RULE 11-404 NMRA AND
 R. EVID. SERV 11-404 OF PHOTOGRAPHS OF DECEASED 2S AND
 MANNER OF DEATH NOT IN DISPUTE AND NO PROBATIVE VALUE AND
 ONLY USED TO PREJUDICE MR. RAMIREZ TO INFLAME PRESENCE
 OF JURORS AGAINST RAMIREZ. HIGHLY PREJUDICIAL DENIAL OF
 FUNDAMENTAL FAIRNESS OF PROCEEDING VIOLATION OF DUE PROCESS.
 THIS WAS NOT RAISED OR ARGUED BY APPELLATE ATTORNEY AND
 EITHER HABEAS ATTORNEY'S. EVEN THOUGH MR. RAMIREZ
 REQUESTED AND THESE ISSUES HAVE MERIT AND MAY
 AMOUNT TO PROSECUTORIAL MISCONDUCT FUNDAMENTAL ERROR
 AND MISCARriage OF JUSTICE, ERRORS AFFECTED THE
 FAIRNESS OF THE JUDICIAL PROCEEDINGS.

BOTH REFUSED TO RAISE OTHER BAD CHARACTER, ACTS EVIDENCE, BY PROSECUTOR
 IN CLOSING ARGUMENT BY PROSECUTOR, MR. RAMIREZ PUNCHED FIRM IN FACE,
 BURGLARIED VICTIM'S HOME, VERBALLY ABUSIVE TO HIS MOM, STOPPED MAIL,
 BROKE THREE WINDOWS, HARRASSED HIS MOM AND RUMOLD, HAD A
 TRESPASS ORDER SERVED TO HIM, NEARLY KILLED VICTIM, THIS WAS
 NOT PROVEN BY ANY FACTS IN COURT TO INFERENCES
 ADDUCED AT TRIAL. ALSO FACT HABEAS ATTORNEY DID NOT
 RAISE ISSUE OF PROSECUTORIAL MISCONDUCT IN CROSS EXAMINATION
 OF RAMIREZ DOING LEGAL RESEARCH.

② APPELLATE COUNSEL SAID I HAVE TO ARGUE
 THIS ON A HABEAS HE REFUSED TO ARGUE
 CONTENTIONS SET FORTH CONTENTIONS
 URGED BY MR. RAMIREZ AND OBJECTION TO BY
 TRIAL COUNSEL IN CROSS EXAMINATION EVIDENCE
 RECENTLY ADMITTED IN VIOLATION OF
 RULE - 11-404 (R) NMEB, AND ~~REBUTED~~
 Fed. R. Evid 11-404 EXHIBIT 110(Sg)
 ITEM 302. NOTE ABOUT SHOOTING PEOPLE
 NIGGAR AND MR. RAMIREZ READ NOTE THEN
 EXCLUDED BY JUDGE THEN USED AGAIN
 IMPERMISSIBLE REPEATED IN CLOSING
 ARGUMENT & REBUTAL JUDGE EXCLUDED
 THIS UNDER RULE - 11-403 NMEB. STILL
 USED IN CLOSING ARGUMENT AND REBUTAL,

protected by the 14th Amendment and
6th Amendment Right to Fair Trial N.M.
And Federal Law And N.M. Art Const, U.S.
Art Const.

1 TRIAL counsel promised if Mr RAMIREZ testified
he would be ABLE to SPEAK OF SEX ABUSE AND
counsel failed to call WITNESSES DR. FANN, DR. BUNN,
DR SWARTZ to testify of SEXUAL ABUSE AND
failed to file motions for change of VENUE AND
SUPPRESS EVIDENCE ITEM 302 EXHIBIT 110 NOTE FOUND
IN CAR, fail to file motion Mr. RAMIREZ
ask him 3 times AFTER Mr. FELL DOWN.

2 APPRIATE counsel said I would have to
argue this ON A HABEAS, HE REFUSED
ATTORNEY did NOT set forth contentions urged by
PETITIONER which had merit.

3 NO BECAUSE HABEAS ATTORNEY refused to set
forth contentions that I wanted that had merit
because she only had 30 days, and could not fully meet
with me and was too busy and filed petition
without any of my important issues, claims,
to come 3. prior bad acts and she knew error and
ineffective assistance of counsel, and prosecutorial
misconduct brief. Ineffective evidence brief,
double jeopardy PAPER.

4 PROSECUTORIAL MISCONDUCT DURING CROSS EXAMINATION,
BUT NO REVERSAL AND IN CLOSING ARGUMENT BUT
NO OBJECTION. IT WAS EVIDENT, PERSUASIVE AND
PREJUDICIAL AND IMPERMISSIBLE COMMENT IN
CHARACTER, CREDIBILITY BAD ACTS, EXCLUDED EVIDENCE IN
VIOLATION OF RULE 11-104 - NMRA - R. EVID FED
11-104.5. APPRIATE ATTORNEY refused to raise issue
said to do it in HABEAS, HABEAS ATTORNEY
refused to raise issues said for
me to do it MYSELF.
other habeas had case 5 months did

page 3.

5) NO ONLY.

LEGAL ARGUMENT REGARDING THE DENIAL OF
A RECAUATION

B. MR. RAMIREZ RECEIVED INEFFECTIVE
ASSISTANCE OF COUNSEL

C) THERE WAS IMPROPER COMMENTARY ON MR.
RAMIREZ'S RIGHT TO SILENCE

D) MR. RAMIREZ WAS PREJUDICED BY THE
JURY SEEING HIS RESTRAINTS

E) THE COURT ABUSED ITS DISCRETION IN COMMITTING
PRIOR BAD ACTS

F) THE COURT ABUSED ITS DISCRETION BY NOT
DECLARING A MISTRIAL.

EVIDENCE OF BATTERY DENIED, PROSECUTORIAL
ON PEACE OFFICER MISCONDUCT
IMPROPER, AN EASE DENIED

IF NOT EXPLAIN WHY NOT
MR. RAMIREZ ADDITIONALLY REQUEST NOW AND TIME
OF APPEAL COURT TO CONSIDER ADDITIONAL ISSUES
WHICH WERE INHERENT IN HIS TRIAL, BUT
WHICH WERE NOT RAISED BY HIS APPELLATE
ATTORNEY, OR HIS HABEAS ATTORNEY ON
COLLATERAL REVIEW.

INEFFECTIVE ASSISTANCE TRIAL COUNSEL DID NOT
OBJECT TO EGREGIOUSLY PERSUASIVE PREJUDICIAL
PROSECUTORIAL MISCONDUCT IN CLOSING
ARGUMENT AND REFUTAL AND DEPRIVED MR
RAMIREZ OF ~~THE~~ STATE AND FEDERAL
RIGHT TO DUE PROCESS RIGHT TO A FAIR
TRIAL

~~Ground 1~~ ~~Ground 2~~ ~~Ground 3~~ ~~Ground 4~~

Ground ④ MR. RAMIREZ WAS AFFORDED THE STATE COURT A fair opportunity to apply controlling law legal principles to the facts hearing upon these constitutional claims. MR. RAMIREZ HAS MADE EFFORT TO JOIN THE ~~ONE~~ two claims or three claims together and HAS presented THE STATE court with the operative facts and cited pertinent federal and state cases. He's made effort to join the claims.

Ground ⑦ INVALID grand jury indictment evidence used IN grand jury indictment evidence would not be ADMISSIBLE IN A district court hearing, hearsay. SAM SAIZ and IVAN VASQUEZ RECALLED TESTIMONY. SAM SAIZ said MR. RAMIREZ made threats to kill victim IN 2006 ~~was~~ now order, and IVAN VASQUEZ recalled statement IN OFF-DUTY signed by him said cops made threats and to lie AND drugs, alcohol. MR. RAMIREZ NEVER CONFUSED ANYTHING TO him, violates the due process clause state and federal rights TO due process and 6th amendment and 14th amendment rights TO A fair trial.

Ground ⑧ comment ON silence post miranda silence if MR. RAMIREZ by deputy loomis ON 5th amendment right to silence AND 6th amendment right to fair trial AND IN violation of STATE and federal due process right to fair trial, protected BY 14th Amendment. N.M. Art const, AND U.S. Art const. deputy loomis attempted to get A statement FROM MR. RAMIREZ! MR. RAMIREZ HAS AFFORDED THE STATE COURT A fair opportunity to apply controlling legal principles 1,

To The facts hearing upon these Constitutional claims. MR RAMIREZ has made effort to join the two claims and has presented the state court with the operative facts and cited pertinent state and federal cases. He made effort to join the claims. of comment on silence by deputy counsils - post MIRANDA, and prosecutors comment REMARKS IN closing Argument and cross exam MR, RAMIREZ did legal research, MR RAMIREZ is A LIAR, MANIPULATOR, MALINGER and INEFFECTIVE assistance of trial and appellate attorney not rejecting as arguing this IN appeal violation of state and federal due process of fair trial.

⑨ SUFFICIENCY OF EVIDENCE IF THE STATE DOES NOT PRESENT EVIDENCE SUFFICIENT TO SUPPORT A FINDING OF GUILT BEYOND A REASONABLE DOUBT, THE VERDICT VIOLATES DUE PROCESS CLAUSE.

⑩ Double Jeopardy. MR. RAMIREZ BELIEVES EVIDENCE TAMPERING. NO PERSON SHALL BE FOR THE SAME OFFENSE TO BE TWICE PUT IN A JEOPARDY OF LIFE OR LIMB U.S. CONST AMEND. V. 5, ART. 1, CONST MR. RAMIREZ WAS AFFORDED THE STATE COURT A FAIR OPPORTUNITY TO APPLY CONTROLLING legal principles to the facts HEARING UPON CONSTITUTIONAL CLAIMS. MR. RAMIREZ HAS MADE EFFORT TO JOIN THE TWO CLAIMS AND HAS PRESENTED THE STATE COURT WITH THE OPERATIVE FACTS AND CITED PERTINENT FEDERAL AND STATE CASES. HE MADE EFFORT TO PRESENT

REGISTERED: ~~RECEIVED~~ 1/22/25

FACTS OF THE CASE

Petitioner, Eighteen year old ALBERT RAMIREZ
Sometimes resided with his mother, PERRO
RAMIREZ AND STEPFATHER, ERADIO ROBIELO
at their home in clovis, New Mexico.
Some of his Belongs remained at the
residence when he was ordered to leave
the home due to a disruption with his
stepfather. When about Ramirez returned
to the home to collect some of his
belongings on July 12th 2007. He argued
with his father and testified he had been attacked
by his stepfather. He asserted the attack
was more threatening because of his physical
circumstances. And he was aware deceased
owned a gun and threatened to use it.

~~He had seen something in deceased's hands~~
He had seen something in deceased's hands
At the time of incident and that there
were two distinct episodes of confrontation
as evidence was located in front of a garage
and near a car in front of house. He
explained his loss of his shoes. And clothing
at the scene as the deceased's actions
in assaulting him and his efforts to
leave. And petitioner stated he
fearful for his safety.

Mr. Ramirez shot and killed Ruben
This was witnessed by two people -
SAM SAIZ, JR. and another person GRACE FINNEY.
During the investigation, law enforcement
located petitioner's ~~car~~ shorts, on a dumpster
several blocks from scene. No firearm
located. Jail calls interpreted where petitioner
directed his cousin to an area to remove
BAM, BAM. Sometime petitioner admitted
was a gun that he used in self defense
during the shooting.

STATEMENT OF FACTS

PROCEDURAL HISTORY

PETITIONER WAS INDICTED ON JULY 20, 2007 AND CHARGED WITH FIRST DEGREE MURDER AND TWO COUNTS OF TAMPERING WITH EVIDENCE. THE LIFE SENTENCES CONCURRENT TO

MR. RAMIREZ MOVED TO WITHDRAW HIS PLEA ON FEBRUARY 25, 2009

A MOTION THE TRIAL COURT HEARD ON JUNE 25TH 2009. BUT DENIED ON JULY 29, 2009. FOLLOWING AN

APPEAL OF THE DENIAL TO WITHDRAW PLEA, THE NEW MEXICO SUPREME COURT REVERSED THE DENIAL ON JULY 6TH 2016. AND REMANDED FOR A TRIAL ON THE MERITS WHICH WAS ULTIMELY HELD ON

OCTOBER 7-11, 2013 WHERE JURORS WERE INSTRUCTED TO FIND 1ST DEGREE MURDER AND PETITIONER WAS FOUND GUILTY OF 1ST DEGREE MURDER. ALTHOUGH PETITIONER WAS

PLEA EXPOSED HIM TO A LIFE SENTENCE ONLY. FOLLOWING TRIAL, PETITIONER WAS SENTENCED TO THE LIFE SENTENCE AND EACH TAMPERING COUNT CONSECUTIVELY, LEAVING HIM AN ADDITIONAL SIX YEARS FOR A TERM OF LIFE PLUS SIX YEARS.

MR. RAMIREZ ADDITIONALLY
 REQUEST THE FOLLOWING COURT TO
 CONSIDER ADDITIONAL ISSUES
 WHICH WERE IN HERDENT IN HIS
 TRIAL, BUT WHICH WERE NOT
 RAISED BY HIS APPEALATE
 ATTORNEY. OR HIS HABEAS ATTORNEY.
 SEE STATE V. FRANKLIN, 78. N.M. 127,
 428 P.2d. 982 (1964) AND STATE V.
 BOYER, 103 N.M. 655, 712 P.2d.
 1 (Ct App 1985) COUNSEL SHOULD
 SET FORTH CONTENTIONS URGED
 BY PETITIONER WHETHER OR NOT
 COUNSEL FEELS THEY HAVE MERIT.
 MR. RAMIREZ ASKS THIS
 COURT TO CONSIDER THE
 FOLLOWING IN THE CONTEXT
 OF THE ENTIRE TRIAL

See ~~see~~ Machibroda v. United States.
 368 U.S. 487 (1962); See
 ALSO DUNCAN V. KERRY, 1993 - NMSC -
 011, 93, 115 N.M. 344.

(3)

22

~~THE~~ DUNCAN, 1913 - NMSC-163, 4
CONSEQUENTLY, WHEN A PETITION
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ALLEGES PARTICULAR FACTS SET OUT
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STATE. V. MOSER, 1967 -
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(OVERRULED ON OTHER GROUNDS)

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page 18

CONCLUSION

FOR WRIT OF

IF A PETITION FOR WRIT OF HABEAS CORPUS DEMONSTRATES ON ITS FACE THAT A PETITIONER MAY HAVE BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS, THE COURT MUST ADDRESS THE ISSUE IN AN EVIDENTIARY HEARING UNLESS IT PLAINLY APPEARS THAT THE PETITIONER IS NOT ENTITLED TO ANY RELIEF AS A MATTER OF LAW, BASED ON FACTS ALLEGED IN THE PETITION, OR THE UNCONTROVERTED FACTS SHOWN BY THE COURT RECORDS. STATE. V. FRANKLIN, 1967-NMSC-151, 6, 78 NM 127. quoting machibroda v. UNITED STATES, 368 U.S. 487 (1962); see also duncan, v. KERRY, 1993-NMSC-011, 3, 115 NM 344 (court must hold an evidentiary hearing where a petition adequately alleged ineffective assistance of counsel.) HABEAS CORPUS PROCEEDINGS ARE THE PREFERRED METHOD FOR ADJUDICATING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE SUCH CLAIMS OFTEN CANNOT BE CONSIDERED BASED SOLELY ON THE RECORD BEFORE THE TRIAL COURT.

page 15

PRAYER FOR RELIEF

~~PRAYER FOR RELIEF~~ RELIEF: Requested

MR RAMIREZ PRAYS THIS COURT
~~DOES~~ RELIEF: THIS PETITIONER
SEEKS TO VACATE AND SET ASIDE
PETITIONER'S CRIMINAL CONVICTIONS
ON THE GROUNDS THAT HE WAS DENIED
HIS STATE AND FEDERAL CONSTITUTIONAL
RIGHTS TO DUE PROCESS AND DENIED
THE EFFECTIVE ASSISTANCE OF COUNSEL
AT TRIAL, AND APPELLATE ATTORNEY,
HABEAS ATTORNEYS ON COLLATERAL
REVIEW. MR RAMIREZ ALSO ASK TO
SET ASIDE CONVICTIONS ON THE GROUNDS
THAT HE WAS DENIED U.S. CONSTITUTION
DUE PROCESS RIGHTS, SHACKLES ERROR,
PROSECUTORIAL MISCONDUCT, AND
THAT EVIDENCE THAT WAS SO EXTREMELY
UNFAIR AND THAT THIS ITS ADMISSION
VIOLATES FUNDAMENTAL ~~CONSTITUTIONAL~~
~~CONSTITUTIONAL~~ → FAIRNESS
AND VIOLATED HIS DUE PROCESS
CLAUSE OF THE 14TH AMENDMENT. @

MR. RAMIREZ MAINTAINS he WAS CONVICTED,
denied his STATE AND FEDERAL due
PROCESS RIGHTS TO A FAIR TRIAL
ALSO. THAT his N.M. CONSTITUTION
AND U.S. CONSTITUTION RIGHTS VIOLATED
denied him A FAIR TRIAL.
DENIED EFFECTIVE ASSISTANCE OF
TRIAL COUNSEL, AND APPELLATE COUNSEL,
AND HABEAS ATTORNEY.

MR. RAMIREZ MAINTAINS THAT HE
WAS CONVICTED IN VIOLATION OF his
5TH AMENDMENT Right to Silence post
MIRANDA, 6TH AMENDMENT Right to
COUNSEL AND FAIR TRIAL, 14TH
AMENDMENT N.M. CONST. U.S. CONST.

10



ALSO RELIEF REQUESTED:

(3)

MR RAMIREZ REQUEST AN ATTORNEY
TO ASSIST IN HABEAS PROCEEDINGS

AND DISCOVERY PROVIDED, TO PRESENT
CERTAIN CLAIMS, ISSUES AND ARGUMENTS
MR RAMIREZ DISCOVERED LOST OF TRANSPORT
BY CORRECTION OFFICERS, BECAUSE HE GROOMED THEM
2-23-22,

ALSO REQUEST EXPAND RECORD, EVIDENTIARY HEARING,
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PRAYER FOR RELIEF.

TO PROVE SERVICES ERRORS, PROSECUTORIAL
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RAMIREZ 4

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GUARANTEES BY THE CONSTITUTION AND
FUTURE THE INTENT OF ITS PROVISIONS" STATE V
N. YOUNG, 172 P.3d 1138, 1412 (2007)

Grounds 1-10

TEN grounds

① INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

55 pages
Send 2 each
1 full copy
STATE OF NEW MEXICO
COUNTY OF CURRY
FILED IN MY OFFICE

② INEFFECTIVE COUNSEL

JAN 09 2023

1:51 PM

③ INEFFECTIVE ASSISTANCE OF HABEAS ATTORNEY

Clerk District Court
KEVIN SPEARS

④ PROSECUTORIAL MIS CONDUCT

⑤ SHOCKING ERROR 26 PAGES SEND BACK OF EACH OF THESE BRO

⑥ PC OR BAD ACTS

⑦ INVALID GRAND JURY

⑧ COMMENT ON SILENCE 17 PAGES SEND BACK 1 FULL COPY OF ALL THESE 2 ME

⑨ INSUFFICIENT EVIDENCE

⑩ Ground 10 double jeopardy

Motion For Amended Petition
Facts of Case 18 pages

24 pages

Motion goes on top 24pg
then facts 18 pages
then every ground
1-10. In order

Send 1
Full copy
to me
of all
these

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Case 2:23-cv-01075-MV-DLM Document 102-1 Filed 01/22/25 Page 172

THIS WAS WITNESSED BY TWO PEOPLE.
SAM SAIZ, JR. AND ANOTHER PERSON GRACE FINNEY.
DURING THE INVESTIGATION, LAW ENFORCEMENT
LOCATED PETITIONERS ~~ON~~ SHORTS, IN A DUMPSTER
SEWAGE BLOCKS FROM SCENE. NO FIRE ARM
LOCATED. JAIL CALLS INTERPRET WHERE PETITIONER
DIRECTED HIS COUSIN TO AN AREA TO REMOVE
BAM, BAM. SOMETHING PETITIONER ADMITTED
WAS A GUN THAT HE USED IN SELF DEFENSE
DURING THE SHOOTING.



STATEMENT OF FACTS

PROCEDURAL HISTORY

PETITIONER WAS INDICTED ON JULY 20, 2007 AND CHARGED WITH FIRST DEGREE MURDER AND TWO COUNTS OF TAMPERING COUNTS RUNNING CONCURRENT TO THE LIFE SENTENCES.

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page 4

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⑩

8

⑩

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9

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N. Young, 172 P.3d 1138, 1412 (2007)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALBERTO JOSE RAMIREZ,

Petitioner,

vs.

No. CIV-21-731 MIS/KK

ROLAND MARTINEZ, *et al.*,

Respondents.

**RESPONSE TO PRO SE PETITIONER ALBERTO JOSE RAMIREZ'S MOTION TO
DISMISS [Doc. 22]**

COME NOW Respondents, by and through counsel, Jane A. Bernstein, Assistant Attorney General, and in response to *pro se* petitioner Alberto Jose Ramirez's motion to dismiss this federal habeas proceeding, [see Doc. 22], notify this Court and Mr. Ramirez that Respondents do not oppose the motion. See Fed. R. Civ. P. 41(a)(1)(A)(i).

Respectfully submitted,

HECTOR H. BALDERAS
Attorney General

Electronically filed



Jane A. Bernstein
Assistant Attorney General

Attorneys for Respondents
201 Third St. NW, Suite 300
Albuquerque, NM 87102
(505) 717-3500
jbernstein@nmag.gov

2+11

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

FILED
9th JUDICIAL DISTRICT COURT
Curry County
10/5/2020 10:25 AM
SHELLY BURGER
CLERK OF THE COURT

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONER'S MOTION TO EXPAND RECORD**

THIS MATTER having come before the Court upon the *pro se* Petition for Writ of Habeas Corpus filed by the Petitioner on August 18, 2020 and the *pro se* Motion to Expand Record filed on September 24, 2020, and the Court being fully advised, enters its *sua sponte* Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on August 18, 2020.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on September 24, 2020 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate

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8. While addressing the applicable law related to Petitioner's indictment, LOPD determined that there is no evidence showing that the State knowingly used false testimony before the grand jury.
9. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
10. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
11. Rule 5-802(H) NMRA states:

H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:

- (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
- (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on August 18, 2020, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
13. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed August 18, 2020, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of

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DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed August 18, 2020 is DISMISSED. Additionally, the Motion to Expand Record filed on September 24, 2020 is hereby DENIED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

2

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT RAMIREZ,
Petitioner,
vs.

No. D-905-CR-2007-00434
(Hon. Drew Douglas Tatum)

STATE OF NEW MEXICO,
LEON MARTINEZ, Warden,
Respondents.

NOTICE OF 5-802(H)(1) PRE-APPOINTMENT REVIEW

The Post-Conviction/Habeas Unit of the Law Offices of the Public Defender provides notice to the Court and Counsel for Respondents of its review in accordance with Rule 5-802(H)(1), NMRA 2017 and states the following:

- 1) The Ninth Judicial Court Clerk filed the *pro se* Petition for Writ of Habeas Corpus on August 18, 2020.
- 2) The Law Offices of the Public Defender (LOPD) was served with the *pro se* Petition for Writ of Habeas Corpus by the Court Clerk on August 18, 2020.
- 3) Pursuant to Rule 5-802(H)(3) NMRA, this review is timely filed on or before October 2, 2020.
- 4) As per, 5-802(H)(1) LOPD has reviewed the Petition and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.¹

¹ Under the Indigent Defense Act, Sec. 31-16-3 (B)(3) a person has the limited right to appointed counsel representation in post-conviction matters "unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense." (Emphasis supplied).

(b)

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- I would obtain counsel, if I had the means funds the money the arrests. I AM poor indigent, so I PER wrongly convicted and denied assistance of defense counsel, appellate counsel, and in petition. "THATS UNFAIR?"
- WHO would NOT obtain counsel, if in my situation, doing life + 6 years, and the denied effective assistance in all critical stages, trial, appeal and HABEAS petition?
- PLEASE I ASK THE COURTS, TO NOT DISMISS MY CLAIMS, MY petition, I ASK THE COURTS to grant my writ, my request for appointment of counsel, my motions, on, on Evidentiary Hearing, disposition, and discovery and trial transcript, to expand the record, to amend and reconsider, to do collateral review.
- I AM doing my BEST with what I HAVE, WITHOUT, LAW library, BOOKS, LAW BOOKS, FORMS, COPIES, NO COUNSEL, NO MONEY, NO PAPER AND PENS AT TIMES. Physical disability, medical illness, NO knowledge of tracing in the law, NOT able to amend, to properly present my claims, or to re-submit to fix problems.
- ④ • I ASK THE COURTS TO AT LEAST ALLOW ME TO FILE all my HABEAS Affidavit, Appeals, all the way up to the UNITED STATES SUPREME COURT, and THEN, IF denied, I ASK ALL THE COURTS to NOT deny ME TO FILE A NEW 2nd petition, A NEW post conviction

dismissing my petition, not denying my request for counsel would

- This would create a miscarriage of justice by not granting me writ, my request for appointment of counsel, and my request for collateral review to exhaust, untested claims, and to be allowed to properly present claim on alleged, verbal abuse and threats by counsel.
- Fact my defense counsel has died and I was prejudiced by his performance and having to be represented by force after I fired counsel in trial, and I ask to represent myself. I had continuously objected and expressed my dissatisfaction, and when I ask to speak on record, after I fired my attorney, everytime I was denied. Now there was no inquiry on the issue, it was not looked into why I fired my defense counsel. Or to represent myself.
- The conflict defense counsel and I had, counsel, it was trial/considerable conflict it affected his performance my defense, counsel did not have no best interest at heart. He had his I had my interest. He was angry.
- I was denied counsel at critical stage, by having no inquiry, and to be represented by counsel who had stated to me, "You little stupid bitch, and said 'I hope you get life.'"
- I am doing life plus 8 yrs or 6 yrs. I did not know maximum and minimum time I was facing or I'd get if convicted, counsel would not let me know, I tried to ask to no avail.

4) Discovery procedures For pro se
petitioners. Courts consider factors
determine whether to authorize
discovery request factors
contained in paragraph A of
Rule 5-507.

MR. RAMIREZ does not know
what these rules mean or how
to find them.

Rule 5-507, Rule 5-503 or
Rule 5-112. NMRA

MR. RAMIREZ asks for motion
for state to compel discovery

PLEASE HELP A CRIPPLED CHRISTIAN

Repeater, Like JOHN A. SICK CHILD

NEEDED HELP. PLEASE THANK YOU
for your time GOD BLESS

~~PLEASE~~ Sincerely
YOURS truly

ALBERTO J RAMIREZ

69597

22

17

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT COURT

ALBERTO RAMIREZ,
Petitioner,

No. D-905-CR-2007-00434
(Hon. Drew Tatum)

v.

STATE OF NEW MEXICO and
SHARLENE HAGERMAN, Warden
Respondents.

NOTICE OF RULE 5-802(H)(1) NMRA PRE-APPOINTMENT REVIEW

The Post-Conviction/Habeas Unit of the Law Offices of the Public Defender provides notice to the Court and Counsel for Respondents of its review in accordance with Rule 5-802(H)(1) NMRA and states the following:

Procedural History

1. The Ninth Judicial Court Clerk filed a *Petition for Writ of Habeas Corpus*, a *Motion to Amended* [sic] *Petition*, and a *Supplemental Petition for Writ of Habeas Corpus* (“*Petition*”) for review on December 27, 2022 and January 9, 2023.
2. The Law Offices of the Public Defender (LOPD) was served with the *Petition* by the Court Clerk on December 27, 2022.
3. Pursuant to Rules 5-104 NMRA and 5-802(H)(3), this review is timely filed on or before February 10, 2023.
4. Petitioner challenges his convictions on a number of grounds.
5. The Indigent Defense Act, Section 31-16-3 (B)(3) NMRA, provides that a person has the limited right to appointed counsel representation in post-conviction matters “unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.”

6. Pursuant to Rule 5-802(H)(1), LOPD has reviewed the *Petition* and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.

Issues and Analysis

7. Following a jury trial in October 2013, Petitioner was convicted of one count of first degree murder and two counts of tampering with evidence and subsequently sentenced to serve a life sentence plus six years.
8. Petitioner has sought numerous post-conviction reviews include a direct appeal following the jury trial, as well as prior petitions for writ of habeas corpus filed on March 22, 2017, April 25, 2017, June 20, 2017, July 17, 2017, June 24, 2019, and August 18, 2020. Petitioner was appointed counsel on the 2017 petition who filed an amended petition and a preliminary disposition hearing was held before the petition was denied. All other petitions were summarily dismissed by the Court.
9. It also appears that Petitioner sought a federal petition for a writ of habeas corpus in cause number 2:21-cv-00731-MIS-KK following the 2020 petition. Documents attached to the *Petition* indicate that the federal litigation was withdrawn at Petitioner's request.
10. In the most current *Petition*, Petitioner challenges his convictions on a number of grounds:
 - a. His trial counsel provided ineffective assistance of counsel by failing to:
 - (1) Object to prosecutorial misconduct during cross examination of Petitioner and closing arguments, as well as to the introduction of prior bad acts and other attacks on Petitioner's character and credibility;
 - (2) Permit Petitioner to testify about sexual abuse by the victim and call witnesses to support Petitioner's proposed testimony;
 - (3) Call witnesses to support Petitioner's claim that the victim was violent;
 - (4) File motions for a change of venue, to suppress evidence, and for a mistrial due to Petitioner's fall in front of the jury.

Petitioner has previously brought a claim of ineffective assistance of counsel by his trial counsel during appellate proceedings, as well as in his habeas petitions filed in June 2017, July 2017, 2019, and 2020.

- b. His appellate counsel provided ineffective assistance of counsel by failing to properly argue the claims included in the *Petition*. Petitioner has previously brought a claim of ineffective assistance of counsel by his appellate counsel in habeas petitions filed in July 2017, 2019, and 2020.
- c. His habeas counsel provided ineffective assistance of counsel by failing to properly argue the claims included in the *Petition*. Petitioner has previously brought a claim of ineffective assistance of counsel by his habeas counsel in habeas petitions filed in 2019 and 2020.
- d. The State committed prosecutorial misconduct through its cross-examination of Petitioner, statements made during closing argument and rebuttal, and introduction of Petitioner's prior bad acts. Petitioner has previously brought a claim of prosecutorial misconduct in habeas petitions filed in July 2017, 2019, and 2020.
- e. Fundamental error for an incident during trial where Petitioner fell down while shackled in front of the jury. This claim was raised during appellate proceedings, as well as in habeas petitions filed in July 2017 and 2020.
- f. The trial court erred in admitting Petitioner's prior bad acts. This claim was raised during appellate proceedings, as well as in habeas petitions filed in July 2017, 2019, and 2020.
- g. The grand jury indictment was based on invalid hearsay evidence and testimony from a witness that later recanted his statements. Petitioner has previously brought a claim regarding the evidence presented at his grand jury in a habeas petition filed in 2020.
- h. The prosecution made an improper comment on Petitioner's right to remain silent when a witness testified that he "tried to interview the defendant" following Petitioner's arrest. This claim was raised during appellate proceedings, as well as in a habeas petition filed in 2020.

- i. There was insufficient evidence to support his convictions. This claim was raised during appellate proceedings, as well as in a habeas petition filed in July 2017.
 - j. His convictions for tampering with evidence were obtained in violation of his protections against double jeopardy. According to the *Jury Instructions*, the conviction in Count 2 was based on Petitioner hiding or placing a firearm, while the conviction in Count 3 was based on Petitioner hiding or placing clothing in a dumpster. Petitioner has previously brought a claim of double jeopardy for these convictions in habeas petitions filed in July 2017 and 2020.
11. “[A] defendant may not seek post-conviction relief for issues raised on direct appeal that were decided on the merits against defendant.” *State v. Gomez*, 1991-NMCA-061, ¶ 5, 112 N.M. 313. Petitioner does not assert that there was an insufficient record to address the matter on appeal, which would permit further review. *Id.* Additionally, Petitioner failed to address the fact that the same issues were raised and decided against him on appeal. This does not provide sufficient basis for habeas review.
12. Additionally, pursuant to Rule 5-802(B)(6) NMRA, “[i]f the Petitioner has previously filed a petition seeking relief under this rule, a statement explaining why the petition should not be dismissed” shall be included. “If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to...dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.” Rule 5-802(I).
13. The applicable committee commentaries for the relevant 2014 amendments states:
- Paragraph B(5) is amended to clarify that it applies to successive petitions for habeas relief. District courts should ordinarily dismiss petitions that do not comply with the provisions of Paragraph B(5).... Paragraph H gives the district court guidance as to the handling of successive petitions for habeas relief. The standard is higher for a petitioner raising a claim rejected in a previous habeas petition than a claim rejected on direct appeal. Standard notions of claim and issue preclusion generally do not apply in habeas cases. *Campos v. Bravo*, 2007-NMSC-021, ¶ 5, 141 N.M. 801. Courts have some discretionary capacity to dismiss habeas claims when a prior petition has been filed. According to *Duncan v. Kerby*, 1993-NMSC-01 1, 115 N.M. 344, 851 P.2d 466: The successive-writ petitioner has already enjoyed the

opportunity to fully explore his constitutional claims in the postconviction setting, whereas the petitioner who makes his initial claim on direct appeal has not, and consequently, the successive writ petitioner is in a weaker position to argue that equity confers yet another postconviction opportunity to make his claim.

14. All of the claims brought in the current *Petition* have been raised multiple times previously during appellate proceedings and/or previous habeas petitions. It does not appear that there has been any intervening change of law or fact since the previous petitions were reviewed by the Court.

Conclusion

15. Therefore, pursuant to Rule 5-802(H)(1), the Post-Conviction Habeas Unit of the Law Offices of the Public Defender has reviewed the *Petition* and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.

I hereby certify that a copy of this notice was transmitted to Petitioner and Counsel for Respondent upon filing.

Sarah Plazola
Sarah Plazola
LOPD Habeas

As per Rule 5-802(H)(1) NMRA 2017, undersigned counsel submits this review for the limited purpose of said procedural rule and is not Counsel of Record on this matter.

Respectfully Submitted,

Sarah Plazola
Sarah Plazola
Post-Conviction Habeas Unit
Law Offices of the Public Defender
505 Marquette Ave. NW, Suite 120
Albuquerque, NM 87102
(505) 369-3587

**NINTH JUDICIAL DISTRICT COURT
COUNTY OF ROOSEVELT
STATE OF NEW MEXICO**

ALBERTO RAMIREZ,
Petitioner,

vs.

No. D-0905-CR-2007-00434

**STATE OF NEW MEXICO and
SHARLENE HAGERMAN, Warden,**
Respondents.

DECISION AND ORDER OF SUMMARY DISMISSAL

THIS MATTER having come before this Court by Petitioner's Petition for Writ of Habeas Corpus filed on December 27, 2022 and Supplemental Petitioner for Writ of Habeas Corpus (hereinafter referred to as "Petition") filed on January 9, 2023 and this Court having reviewed this matter and being fully advised, FINDS:

1. A review of the file shows that Petitioner was convicted, following a jury trial in October, 2013, of one count of first degree murder and two counts of tampering with evidence and subsequently sentenced to serve a life sentence plus six years.
2. Petitioner has sought numerous post-conviction reviews. Petitioner filed a direct appeal following his conviction and sentence in February, 2014. Petitioner's conviction was affirmed in January, 2017. Petitioner filed several prior petitions for writ of habeas corpus in March, 2017, April, 2017, June, 2017, June, 2019 and August, 2020. Petitioner was appointed counsel on the June, 2017 petition, who filed an amended petition and a hearing was held before the petition was denied. All other prior petitions were summarily dismissed by the Court.
3. In his Petition, Petitioner raises several issues related to his conviction.

EXHIBIT

VV

4. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
5. LOPD filed a Notice of 5-802(H)(I) Pre-Appointment Review on February 8, 2023 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as through fully set forth.
6. Rule 5-802 (H)(I) NMRA provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD would recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate means would be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment".
7. LOPD addressed the issues raised by Petitioner in its five (5) page Notice. This Court finds that LOPD provided sufficient detail for this Court to review its assessment.
8. LOPD reviewed the Petition and "determines that is it not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense".
9. After a meaningful and thorough review, this Court finds that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
10. This Court finds that is plainly appears from the face of the Petition that the Petitioner is not entitled to relief as a matter of law. Rule 5-802 (H)(2)(b) NMRA. A revised petition, and/or submission of supporting documentation, is unnecessary.

DECISION AND DISMISSAL

After examining the Petitioner's Petition filed on December 27, 2022 and Supplement Petition filed on January 9, 2023, the prior proceedings in this case, and LOPD's Notice, filed on February 8, 2023, this Court finds that it appears from the face of the Petition that the Petitioner is not entitled to relief as a matter of law. Therefore, in accordance with Rule 5-802(H)(2)(b) NMRA, the Petitioner's Petition for Writ of Habeas Corpus filed on December 27, 2022, Motion to Amended Petition filed on December 27, 2022 and Supplemental Petition filed on January 9, 2023 are SUMMARILY DISMISSED. Counsel will not be appointed, no Response is required from the State and a hearing will not be set.

A handwritten signature in black ink, appearing to read 'D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

9th JUDICIAL DISTRICT COURT
Curry County
07/06/2023 11:37:42
KEVIN SPEARS
CLERK OF THE COURT

9-701. Petition for writ of habeas corpus.
[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF Curry
IN THE DISTRICT COURT

For Official Use Only
No. D905CR 200700434
(To be supplied by the
clerk of the court)

Alberto Jose Ramirez
(Full name of prisoner)

Petitioner,

v.

Nigili
(Name of warden, jailor
or other person having
power to release the petitioner)
Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. If more space is required, attach additional pages as needed. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. Alberto Jose Ramirez (name of person in custody) is imprisoned or otherwise restrained at Central New Mexico Corr. Facility (name of facility and county of detention) by Warden Nigili (name and title of person having custody).

2. This petition (**SELECT ONLY ONE**. If you wish to raise both types of claims, you must file two separate petitions and submit each petition in the location required by Rule 5-802(E)):

- ☒ seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, interpretation of the sentence by the institution or other matters relating to the trial or sentence the confined person received).

NOTE: If the petition seeks to vacate, set aside or correct the sentence or order of confinement, correct the Corrections Department's interpretation

EXHIBIT

WW

COMES NOW the petitioner,
 ALBERTO RAMIREZ, PROSECUTOR PURSUANT TO
 NMRA Rule 5-807 and Article II,
 Sections 7, 12, 14, 15, 18 OF THE NEW
 MEXICO CONSTITUTION AND THE FIFTH AND
 SIXTH AND FOURTEENTH AMENDMENTS OF THE
 NEW MEXICO CONSTITUTIONS, AND THE UNITED
 STATES CONSTITUTION; AND RESPECTFULLY
 SUBMITS this petition FOR WRIT OF
 HABEAS CORPUS.

MR. RAMIREZ RESPECTFULLY REQUEST THAT THIS
 HONORABLE COURT ISSUE A WRIT OF HABEAS
 CORPUS AND VACATE, SET ASIDE OR CORRECT
 MR. RAMIREZ'S SENTENCE AND ORDER OF
 CONFINEMENT IN D-905-CR-2007-434.
 MR. RAMIREZ CONTENDS THAT HE WAS DEPRIVED
 HIS STATE AND FEDERAL ~~CONSTITUTIONAL RIGHTS~~
~~AND~~ AND UNITED STATES CONSTITUTIONAL RIGHT TO
 DUE PROCESS AND A FAIR TRIAL BECAUSE THE
 CUMULATIVE EFFECTS PREVENTED HIM FROM
 PROVING HIS INNOCENCE. THE FOLLOWING AMENDMENTS
 HAVE BEEN MADE TO THE PROSECUTIONS
 FILED IN PAST AND PRESENT NOW.

① place of confinement → MR RAMIREZ IS detained
by warden Nisili AT the
prison of central New Mexico corr. facility MHTC

② Nature of proceedings resulting in confinement
MR. RAMIREZ petitioner was found guilty ~~and~~ following
charge of plea on the date of his trial Jan 26th
2009 of two counts of tampering with evidence
and first degree murder. In the first degree,
petitioner moved to withdraw his plea the
court denied it; however, the supreme court
remanded the matter, allowing petitioner to
withdraw his plea. Jury trial was ultimately
held on October 10th 2013, and lasted 4
days, after which petitioner was found of
the murder and tampering charges.

③ The judgement & sentence resulting in current confinement;
petitioner was sentenced in the 9th judicial district court,
Honorable Teddy L. Hartley, on Jan 8th 2014 to consecutive
sentence on each of the counts: a period of life in
the murder count plus 6 years (6) & for each of the
tampering w/ evidence counts, in the New
Mexico Department of Corrections.

- ④ Direct appeal on February 7th 2014 petitioner appeared his original conviction to the Supreme Court of New Mexico in State v. Ramirez, S, Ct. No. 34, 576 and a mandate affirming the trial court was issued on January 18th 2017.
- ⑤ Prior petitions. Petitioner filed a petition of writ of habeas corpus 3.22.17, 4.25.17, 6-26.17, 7.17.17, 4.18.2018, 8.20.20 12.26.22, 1.6.23
- ⑥ Habeas Representation / Time lines of petition: by order of the court, the public defender, Angela Stephenson, entered appearance of on August 27th 2017. MS Stephenson filed two request for extensions one on October 23, 2017, and again on January 19th 2017. ~~MS. STEPHENSON~~ ~~did not~~ ~~do anything~~ besides that on purpose. Making the petition due on or before April 19th 2018 ~~overcoming~~ due to a conflict ~~at~~ the public defender's office recently reassigned the petitioner's case to Liame Exell, who requested a sixty day extension in order to fully review the case, meet with her client and file the brief. The request was opposed by the state. Consequently, that petition was filed without fully meeting with Ramirez.

⑦ RELIEF REQUESTED. THE PETITIONER
SEEKS TO VACATE AND SET ASIDE
PETITIONERS CRIMINAL CONVICTIONS ON
THE GROUNDS THAT HE WAS DENIED HIS
STATE AND FEDERAL RIGHTS TO DUE PROCESS
RIGHT TO A FAIR TRIAL.

ALSO DENIED HIS UNITED STATES
RIGHTS TO DUE PROCESS CLAUSE
RIGHT TO A FAIR TRIAL.

5TH CONST ART AMEND, 6TH CONST ART
AMEND AND 14TH CONST ART AMEND.

or application of the sentence or order of confinement, or challenge the conviction, it shall be filed in the county of the court in which the matter was adjudicated, or, if the matter has not been adjudicated, it must be filed in the county of the court that ordered the contested confinement. See Rule 5-802(E)(1) NMRA.)

- [] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. *(This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole.)* NOTE: *If the petition challenges conditions of confinement or matters other than challenges to the sentence or order of confinement (those set forth in the first option), it shall be filed in the county where the petitioner is confined or restrained. See Rule 5-802(E)(2) NMRA.*

3. State concisely the facts upon which the confined person bases the claim:

SEE ATTACH PAGES IN ORDER 1-9

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

SEE ATTACH PAGES IN ORDER 1-9

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

SEE ATTACH PAGES IN ORDER 1-9

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

SEE ATTACH PAGES IN ORDER 1-9

7. Briefly describe the relief requested:

SEE ATTACH PAGES IN ORDER 1-9

3. state concisely the facts upon which the person
basis the claims

See attach pages on habeas corpus petition
for facts upon which all the basis
of the claims.

Please and thank you to much
to write. my best.

Good Bless you All

Sincerely

Alberto Jose

Ramirez 69597

I AM INNOCENT.
Please help me thank you
very much.

A-1

State concisely the grounds and laws on which the confined person basis the claim

① Ground ① → ACTUAL INNOCENCE CLAIM DEFENSE OF SELF DEFENSE • A DEFENDANT IS PRESUMED INNOCENT and IS ENTITLED TO due process and a fair trial. U.S. CONST., AMEND V., X & XI; N.M. CONST., ART II § 18. "STATE V. MARTIN, 1984-NMSC-077, ¶ 17, 101 N.M. 595 (Fair trial); U.S. CONST., AMENDS VI, and VII, and N.M. CONST., ART II, SEC. 14 and 18 (presumption of INNOCENCE; and N.M. CONSTITUTION; ART. II, SEC. 18; and the U.S. Constitution, AMEND. V and 14 (due process). MR RAMIREZ MAINTAINS that he was denied these rights.

... with without these rights MR RAMIREZ ASSETS, his broader right to a fair trial, guaranteed by the 14th Amendment to the United States Constitution and by Article II Section 18 of the New Mexico Constitution was imperiled.

These rights ^{and protected} GUARANTEED by the N.M. CONST. ART AMEND. AND U.S. CONST. ART AMEND.

Protected by the 6th CONST ART AMEND
State and due process ~~and~~ fair right to
A fair trial AND 14th CONST ART AMEND
UNITED STATES due process clause
Right to a fair trial.

S. Ct. at 2064. IN REVIEWING AN INEFFECTUOUS CLAIM
THE ENTIRE PROCEEDINGS MUST BE CONSIDERED AS A
WHOLE. *Id.* *State v. Toney*, *State v. Louato*,
110 N.M., 146, 147, 793 P.2d. 276, 277
(Ct. App. 1990)

Ground 2 and ground 3
INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL AND APPELLATE COUNSEL.

③ Ground 4. Prior bad ACTS.

Prior bad ACTS should NOT have been introduced and their introduction denied Mr Ramirez a Fair TRIAL.

MR. RAMIREZ is PRESUMED INNOCENT and IS ENTITLED to due PROCESS and a Fair TRIAL, U.S. CONST., AMEND V., XIV; N.M. CONST., ART II § 18; and the U.S. Constitution, AMEND V and 14 (due PROCESS). MR. RAMIREZ MAINTAINS that he WAS DENIED these RIGHTS when over OBJECTIONS, the STATE introduced Prior bad ACTS during TRIAL.

MR. Ramirez RIGHTS to a Fair trial and due PROCESS were VIOLATED by U.S. CONST., AMEND V., XIV; N.M. CONST., ART II § 18 (Fair TRIAL) and New Mexico Constitution, ART II, Sec 18; and the U.S. Constitution, AMEND V and 14 (due PROCESS).

MR. RAMIREZ MAINTAINS he WAS DENIED these RIGHTS.

Ground 5)

PROSECUTORIAL MISCONDUCT
 A DEFENDANT IS PRESUMED INNOCENT AND IS ENTITLED
 TO DUE PROCESS AND A FAIR TRIAL. U.S. CONST.,
 AMEND V; XIV; N.M. CONST., ART II § 18.
 STATE v. MERTIN, 1984-NMISC-077, 17, 101 N.M. 545
 (FAIR TRIAL); U.S. CONST., ART AMENDS VI and VII,
 AND N.M. CONSTITUTION, ART II, SEC 14 and 18
 (PRESUMPTION OF INNOCENCE; AND N.M. CONSTITUTION;
 ART. II, SEC -18; AND THE U.S. CONST, AMEND V and
 14 DUE PROCESS. MR RAMIREZ MAINTAINS THESE RIGHTS
 WERE VIOLATED. WITHOUT THESE RIGHTS MR. RAMIREZ
 ASSERTS, HIS BROADER RIGHT TO A FAIR TRIAL, GUARANTEED
 BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION
 AND BY ARTICLE II SECTION 18 OF THE NEW MEXICO
 CONSTITUTION WAS IMPAIRED
 THE 6TH AMEND ART CONST, STATE AND FEDERAL
 DUE PROCESS RIGHT TO A FAIR TRIAL
 AND THE 14TH CONST ART AMEND OF THE
 UNITED STATES DUE PROCESS CLAUSE RIGHT
 TO A FAIR TRIAL.
 ALSO COMMON-ON POST-MORTEM SILENCE BY
 PROSECUTOR INCLOSING ARGUMENT. EXERCISE OF SIX AMENDMENT
 RIGHT TO REMAIN SILENT IS PROTECTED BY THE
 14TH AMENDMENT DUE PROCESS CLAUSE OF THE
 U.S. CONST. ART AMEND

Ground 6)

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Comment on Silence

Post Miranda Silence Exercise of the 5th and 6th Amendment Art const. of N.M. And right to remain silent is protected by the 6th and 14th Amendment due process clause of the U.S. const Art. Amend. State and Federal (due process) Right to a fair trial.

Ground 7) Snickers Error is protected by the State and Federal ~~Minimum~~ due process Right to a fair trial and

Ground 7) Snickers Error. IS protected by the 6th Amendment, 5th Amendment and 14th Amendment of the N.M. const. Art Amend. and the U.S. const. Art Amend. State and Federal Right to due process Right to a fair trial. protected by the U.S. 14th const. Art Amend. due process clause Right to due process.

Also The 5th Amendment and Art const Right to due process clause of the United States const. Right to a fair trial.

⑤ Have the grounds being raised in this petition been raised previously in your direct appeal? If ~~yes~~ so explain result. If not explain why not.

All grounds have been raised in appeal. 2, 4, 5, 6, 7. Except grounds ① Claim of actual innocence. And ground ③ claim ineffective assistance of ~~every~~ appellate attorney.

① claim of actual innocence discovered after appeal, as well as ground 3. Ineffective assistance of appellate attorney

(16)

have the grounds raised in this petition been previously raised in another petition for writ of habeas corpus? If so explain the result. If not explain why not.

All grounds have been raised in previously habeas corpus petition. Denied 2, 3, 4, 5, 6, and 7 only two not raised in previous habeas corpus petition was actual claim of innocence self ~~own~~ defense.

Explain why not.

Mr Ramirez was in Lee County Correctional Facility in Dec 2022 he was denied legal books post conviction remedy books because of the coronavirus, no legal access, then from February 2022 to Dec 10th ~~2022~~ ²⁰²³ Mr Ramirez would of sent off petition supplemental ~~remedy~~ Amended petition before decided on ~~then~~ February 10th 2023 But Mr Ramirez was moved to penitentiary of New Mexico Level 5 max and security threw away his pens he did not get no pens from Jan 5th till January 26th. well on January 27th 2023 inmates drugged his food and Mr Ramirez asked security for help and medical help inmates told him they put pee, poop

SPERM, SEMEN, trazadone And LSD. And he was placed ON suicide watch For From 1.29.23 to 2.1.23. mental health said Ramirez was paranoid, psychiatry said he was manic because he was yelling for help, he could not swallow, talk, dizzy, chest pain, scared to sleep scared he would die IN his sleep, dehydrated, and NO help. Then ON ~~2~~ 2.1.23 Ramirez WAS SENT to mental health treatment center CMHCF. IN LOS ANGELES prison, he was denied legal materials From 2.1.23 to 4.5.23 and IN acute care unit AND even IN B pod got legal materials. While IN A pod Accl. mr. Ramirez got letter saying he had 30 days to send petition For writ of certiorari to NEW MEXICO SUPREME COURT. Well MR. RAMIREZ sent ~~petition~~ petition For writ of certiorari to his brother to send with a copy of state habeas corpus petition by March 10th. Brother sent it to 9th judicial district court, well MR. Ramirez found this out IN ~~April~~ May 20th 2023 Brother sent it to wrong place, plus, security staff threw away MR. Ramirez copy of his state habeas corpus and took his phone for 8 months ^{legal materials confiscated.} IN retaliation For reporting PREA and filing complaints and grievances ON PRISONS

AT PNM SOUTH LEVEL 4 AND MATEC. WELL MR
RAMIREZ DISCOVERED PAPERS THROWN AWAY AND NOW
MR. RAMIREZ JUST FILED PETITION WITH CLAIM
OF DEFENSE OF CLAIM ACTUAL INNOCENCE
SELF DEFENSE. THERE MORE DETAILS BUT THIS IS ALL
FOR NOW. BRIEFLY DESCRIBED DETAILS OF WHY NOT
FILED SOONER. JUST DISCOVERED CLAIM OF ACTUAL
INNOCENCE SELF DEFENSE ON DEC 12TH 2022.
SEE CASE U.S. V. MCATEE, 481 F.3d 1099, 1103
(8th Cir 2007) EXPLAINING THAT INDICATOR OF THE
AFFIDANT'S CREDIBILITY. THIS IS DETAILED AND
ALL GROUNDS ARE PART OF AFFIDANT'S STATEMENT.

ALSO WHILE AT CNMCF / MATEC. MR RAMIREZ WAS
DENIED MAILING ENVELOPES AND DEBIT MEMOS AND
HIS LEGAL MATERIALS IN APR 2023 TO 4.5.23
BPOD AND THEN HE FOUND OUT SECURITY HAD
CONFISCATED HIS LEGAL MATERIALS THEN ON
4.5.23. HIS LEGAL MATERIALS STATIONER, AND
HE WAS NOT ABLE TO GET THEM HIS FAMILY
WOULD NOT HELP. THE 9TH JUDICIAL
DISTRICT SAID THEY WOULD NOT SEND
THEM TO ME EVEN IF I PURCHASED
TRAIL FROM HEBREW CORPUS FILED
ON JAN 6TH 2023.

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MR. RAMIREZ IS TRYING TO SHOW EXCUSABLE
NEGLECT AND CIRCUMSTANCES WERE BEYOND THE
CONTROL OF MR. RAMIREZ.

MR. RAMIREZ CLAIMS ~~ACTUAL~~ ACTUAL
CLAIM OF INNOCENCE SELF DEFENSE.

See MILLER V. MARR, 141 F.3d. 976. 978
(10th Cir.) 1998) where petitioner claims
ACTUAL INNOCENCE the limitations period
raises serious constitutional questions.

See ~~AAK~~ CASE V. HATCH, 1731 F.3d. 105 (C.R. 2013)
Satisfied 2244 (b)(2)(B) (i)(1) ACTUAL INNOCENCE claim.
Requirement, met by MR. RAMIREZ.

See, McLeskey V. ZANT, 499 U.S. 467, 487, 111
S.Ct. 1454, 113 L.Ed.2d. 517 (1991)
claim could of been raised in first petition
due to deliberate abandonment of INEXCUSABLE NEGLIGENCE

MR. RAMIREZ IS INNOCENT and has
SHOWN WHEN HE WAS UNABLE TO RAISE

ISSUE IN JANUARY 2023. because
confusion of legal materials by prison staff
corruption illegal bad evil people.

① Briefly describe the relief requested: ①A

- ① Appoint new Appellate Attorney or Habeas Attorney to assist. ② provide discovery to help prove claims and produce evidence on claims of actual innocence. ③ As my discovery thrown away by prison staff.
- ④ Disposition Hearing. ⑤ Expand record. ⑥ Evidentiary hearing. ⑦ provide trial transcript to prove claims and arguments to add evidence to grounds Actual claim of INNOCENCE Self defense and prosecutorial misconduct and comment on. ⑧ Interven. post Miranda silence.
- And ⑨ For courts to Intervene to prevent a miscarriage of justice.
- ⑩ Revoke and Remand for a new trial.

8. State the nature of the court proceeding resulting in the confinement (i.e., criminal prosecution, civil commitment, etc.), including:

(a) case name:

STATE OF NEW MEXICO V. AURELIO JOSE RAMIREZ

(b) docket number:

D-905-CR-2007-0434

(c) name of judge:

TEDDY L. HARTLEY

(d) name and location of the court in which the proceeding was held:

9th JUDICIAL DISTRICT COURT 700. N. MAIN ST
ALBUQUERQUE, NM. 87101

9. State the date of the final judgment, order or decree for confinement:

JANUARY 8th 2014

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

LIFE MURDER. AND TWO TAMPERING W/ EVIDENCE
6 YEARS TOTAL. LIFE PLUS 6 YEARS

11. Was the conviction the result of:

☐ Guilty plea

☐ No Contest plea (*nolo contendere*)

☒ Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

☒ Yes

☐ No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

JESSE R COSBY P.O. BOX 330 ROSWELL NM 88203

14. Did you appeal your conviction?

☒ Yes (Go to 15)

☐ No (Go to 16)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

NEW MEXICO SUPREME COURT OF APPEALS
P.O. BOX 848 SANTA FE, NM 87504

(b) The case name and docket number for each appeal:

STATE OF NEW MEXICO V. AURELIO JOSE RAMIREZ
NO. S-1-SC-34576

(c) The date each appeal was filed and decided: (Attach a copy of each opinion or order)

AUGUST 12th 2014. DECIDED DEC 1st 2016.

(d) A summary of the grounds upon which each appeal was based:

COMMENT ON SILENCE, SNATCHES ERROR, PRIOR BAD ACTS
PROSECUTORIAL MISCONDUCT

(e) The result of each appeal:

Denied

(f) The name and address of the attorney on appeal:

STEVEN J. FORSBERG
505 MARQUETTE AVE N.W. #120
ALBUQUERQUE, NM 87102

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

☒ Yes (Go to 18)

☐ No (Go to 19)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

HABEAS CORPUS petition, petition for collateral,

(b) The name and date of each case:

State of New Mexico v. ARNOLD J. REYNOLDS

(c) The docket number:

(d) The court, the administrative agency, or institutional grievance committee from which relief was sought:

9th Judicial District Court 700 N. MONTGOMERY AVE S.W.

(e) The result of each proceeding. (Attach a copy of each decision.)

Denied

(f) The issues raised in each proceeding:

COMMENT ON SILENCE, SNATCHES ERROR, PRIOR BAD ACTS
PROSECUTORIAL MISCONDUCT

(g) State whether a hearing was held in connection with each of these proceedings:

disposition hearing

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

LUCAS E. KERR P.O. BOX 10491
ALBUQUERQUE, NM 87189-0491

19. Do you seek the appointment of counsel to represent you?²

✓ Yes
 _____ No

VERIFICATION

STATE OF NEW MEXICO
 COUNTY OF Curry

I, the undersigned, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. I affirm under penalty of perjury under the laws of the State of New Mexico that on JUNE 30th, 2023 (date); I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

9th Judicial District Court (name of court)
CLAVIS (city), New Mexico, 88101 (zip code).

Alberto Jose Ramirez
 (Signature)
P.O. Drawer 1328
 (Address)
LOS ALAMOS NM 87031
 PNM No., if applicable

USE NOTE

1. After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2. Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. See Rule 5-802(D)(2) NMRA.

[Adopted, effective August 1, 1989; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

Motion For transcript

of trial proceedings closing argument and

Rebuttal - it is needed for effective
defense . Habeas corpus petition

Petition for writ of certiorari.

Federal habeas petition.

Britt v North Carolina, 404 U.S.
266, 227, 92 S.Ct. 431, 30, LEd. 2d
400 (1971)

Motion for transcript under 2550
753 28. U.S.C.A.

Transcript of closing argument and
Rebuttal would aid the courts
and help Ramirez prove his claims.

Motion to appoint attorney to
assist in proceedings.

Motion to proceed in forma
pauperis I am an indigent
prisoner.

Motion for discovery to aid
IN ^{preparing} proving my claims.

Motion For Expansion of the Record
transcript could yield evidence in
enabling. MR LAMERER to prevail
on his claims
It would add the district court

Motion for Evidentiary hearing

See. DUNCAN V. KERRY, 1993 - NMSC - 611, 3,

115 N.M. 344 (Court must hold an Evidentiary hearing

where petitioner adequately alleged Ineffective assistance

of counsel, consequently when a petitioner for

Writ of Habeas corpus alleges particular facts

which set out a claim of inadequate representation;

The petitioner is entitled to a hearing

State. V. MOSE. 1967, NMSC - 1463, 6, 78 N.M.

212, overruled on other grounds.

Motion for Evidentiary hearing on all
other claims as well.

equitable 10

Tolling

Extraordinary
Circumstances

beyond Mr. Ramirez
Control. to file
petition timely.

Locked up at mental health
treatment center Hospital in
prison CNMCF.

①
 ACTUAL INNOCENCE CLAIM DEFENSE
 OF SELF DEFENSE:...

Several witnesses, and evidence, exhibits,
 transcript to prove this claim,
 MR RAMIREZ claimed self defense and
 prosecutor commented on MR RAMIREZ
 poor Miranda silence, called him a ^{menace} _{to society},
 liar, manipulator and manipulator and
 said this was the first time anyone
 heard of that story.

This attack on MR RAMIREZ character
 and credibility destroyed any chance
 RAMIREZ had to have jury believe him
 Also, MR RAMIREZ asked for a maximum
 swears to testify in his defense and
 was denied this right to assist in his
 defense, self defense.

ISSUES PRESENTED IN ②
THIS PETITION.

① - WHETHER PETITIONER WAS DENIED
HIS SIXTH AMENDMENT RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL
DURING GUILT PHASE OF TRIAL OF COMPULSORY
PROCESS WHEN HIS ATTORNEY REFUSED TO
CALL DR. MAXANN SWARTZ TO TESTIFY
AT TRIAL ABOUT RAMIREZ STATE OF MIND?
ALSO OTHER WITNESSES TO HIS ~~OWN~~ DEFENSE
OF SELF DEFENSE?

RICKY JARAMILLO, PRISCILLIA LOPEZ,
AND RECALL GRACE FINNY AND SAM SOLO

ALL WITNESSES
STATEMENT
INTERVIEWS

TO ASK QUESTIONS OF MR. RAMIREZ; ~~DECEASED~~ ^{DECEASED}

HEIGHT AND WEIGHT TO SHOW MR.

RAMIREZ WAS THE ONE BEING CHASED AND
RAMIREZ SHOT IN SELF DEFENSE.

1
 ① ~~MR~~ MR RAMIREZ WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING PHASE TRIAL BY HIS COUNSEL REFUSAL TO ARGUE DEFENSE OF SELF DEFENSE MR REQUEST HOWEVER COUNSEL REFUSED.

2③ → MR RAMIREZ WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING ^{CLOSING ARGUMENT} GUILT PHASE OF TRIAL, COUNSEL FAILED DID NOT OBJECT ONCE TO NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT.

2④ MR. RAMIREZ WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING CLOSING ARGUMENT IMPROPER ATTACK ON CREDIBILITY AND CHARACTER ATTACK ON MR. RAMIREZ.

② MR RAMIREZ REQUESTED TO CALL ALL FRIED TO TESTIFY IN HIS DEFENSE AS WELL TO NO AUDIL

ALSO WITNESSES CLOVIS FIRE DEPARTMENT

~~ADDITIONAL~~ Disposition.

EMS, PERSONNEL KAREN ~~BUENS~~ BUENS,
CHRIS ELM, MIKE NOIAN,

CHIEF COMPLAINT 12:43:00 UNIT 24 ARRIVED
TO FIND 39 YR OLD MALE WITH WEIGHT OF
79.4 KG / 175. LBS. PATIENT COMPLAINTING
OF GUNSHOT PATIENT.

TO PROVE RAMIREZ WAS BEING CHASED
AND SHOT IN SELF DEFENSE.

MR RAMIREZ WAS NOT CHASING DECEASED.

ALSO WITNESS KIRAN SHARMA DOCTOR MEDICAL
SAID MR RAMIREZ WAS PARANOID AND
NEEDS PSYCHIATRIC HELP, REFERRED TO LHM ORTHOPEDICS.

ALSO DR. FINUS ASSESMENT TESTIMONY ABOUT
MR. RAMIREZ STATE OF MIND. FOR HIS DEFENSE
OF SELF DEFENSE.

① WHETHER PETITIONER → ③
 MR. RAMIREZ WAS DENIED EFFECTIVE
 ASSISTANCE OF APPELLATE ATTORNEY ON
 APPEAL?

① By Appellate Attorney Failure to
 Argue defense counsels Failure to
 Object to Closing Argument and Permitted
 Prosecutorial Misconduct, which created
 Fundamental Error and Miscarriage of Justice?

② Whether Appellate Attorney Refusal to
 Argue Trial counsels Failure to give an
 Instruction on competency and self-defense
 Instruction?

④. ④

WHETHER PETITIONERS CONVICTIONS WERE
OBTAINED IN VIOLATION OF HIS STATE AND
FEDERAL RIGHT TO DUE PROCESS AND A
FAIR TRIAL WHEN PRIOR UNCHARGED ACTS
WERE INTRODUCED WITHOUT A BALANCING
ANALYSIS UNDER RULE 11-401A ~~NMRA~~ 2004
RULE 11-404 NMRA 2004 AND ADMITTED
IN VIOLATION OF RULE 11-403 NMRA 1998?
DURING DIRECT EXAMINATION, and
CROSS EXAMINATION AND CLOSING
ARGUMENT AND REBUTTAL.

⑤ WHETHER ~~PERMISSIBLE~~ THE COURT AND PROSECUTOR COMMITTED NUMEROUS INSTANCES OF PROSECUTORIAL?

DURING CROSS EXAMINATION AND CLOSING ARGUMENT AND REBUTTAL?

COMMENT ^{NO OBJECTION} ON SILENCE, CALLED RAMIREZ A LIE, MURDERER, MANIPULATOR, A MENACE TO SOCIETY, IMPERMISSIBLE COMMENT ON RAMIREZ CHARACTER USE OF EXHIBIT 110

Prof Sony admitted over objection And Read to Jurors by Mr Ramirez then Excluded And still used In closing Argument And REBUTTAL...

6
⑥ WHETHER PETITIONER WAS DENIED
HIS RIGHT TO STATE AND FEDERAL
RIGHT TO DUE PROCESS TO A FAIR TRIAL?

WHETHER PETITIONER WAS DENIED HIS
UNITED STATES DUE PROCESS CLAUSE
RIGHT TO A FAIR TRIAL, WHEN
JURORS OBSERVED HIM IN SHAKES
AND SEEN HIM FALL AND MOVED THE
TABLE SHAKED TO DURING TRIAL?

Q. 7

THERE WAS IMPROPER COMMENTARY
ON MR RAMIREZ RIGHT TO SILENCE...

DURING DIRECT EXAMINATION OF DEPUTY
LOOMIS AND DURING CLOSING ARGUMENT

AND REBUTTAL...

WHETHER COMMENT ON SILENCE DENIED A
FAIR TRIAL? OFFICE LOOMIS ATTEMPTED TO
INTERVIEW MR RAMIREZ. THE DEFENSE OBJECTED
AND MOVED FOR A MISTRIAL FOR COMMENTARY
ON INVOCATION OF RIGHTS. THE COURT DENIED
THE MOTION.

#1 0

Equitable TOLLING
Extraordinary Circumstance
beyond MR PARGUEZ'S ABUSE'S
CONTROL, TO FILE PETITIONS
TIMELY.

SEE AFFIDAVIT SWORN STATEMENT
32 pages Front only

See. U.S. v. Galvan, 552 F.3d 1121, 1124 - 27 (10th Cir 2008)

The petitioner demonstrated that he was entitled to equitable tolling where prison staff had confiscated all his legal materials just weeks before expiration of the limitations period. Petitioner filed his Federal petition 22 days after his legal materials were returned to him. The court held that petitioner exercised diligence both in pursuing his claims and in attempting to retrieve his seized materials. The court rejected the state's argument that petitioner was ineligible for tolling equitable tolling simply because he waited until late in the limitation period to file Federal habeas petitions. This is similar to *Arbuthnot Ramirez* case.

See. *Espinosa - Matthews v. California*, 432 F.3d 1021, 1023, 1024, 9th Cir 2005

Remanding for further fact-finding where a prisoner was denied access to his legal files during two temporary transfers lasted 82 days.

MR. GILBADON, ALSO ARGUED ACTUAL FACTUAL INNOCENCE IS A GROUND FOR EQUITABLE TOLLING.

GIBSON V. KLINGER 232 F.3d 299, 808 (10th Cir 2000)

MR. RAMIREZ SIMILAR TO GILBADON ARGUES IMPERATE LEGAL INNOCENCE NOT FACTUAL INNOCENCE.

See, Valverde V. STANSTON 224 F.3d 129, 133 (2d. Cir 2000) THE 2d CIRCUIT HELD THAT THE CONFISCATION OF A PRISONERS LEGAL PAPERS BY A CORR. OFFICER SHORTLY BEFORE FILING DEADLINE MAY JUSTIFY EQUITABLE TOLLING PERMIT THE FILING OF A PETITION AFTER THE STATUTE OF LIMITATIONS ORDINARILY WOULD HAVE RUN. THE COURT NOTED THE INTENTIONAL CONFISCATION OF A PRISONERS HABEAS CORPUS PETITION BEFORE LEGAL PAPERS BY CORRECTIONAL OFFICERS →

extraordinary matter of law and a person is plainly prevented from filing a pleading for some period of time if he ~~was~~ is deprived of the sole copy of that pleading something that the petitioner asserts happened to him here.

Mr. Ramirez case is similar.

Free standing.
"Extraordinary Circumstance" : CLAIM ACTUAL INNOCENCE
"Affidavit" MR. RAMIREZ JOSE ALBERTO

FOR EXPLAINING ^{SPECIFIC} DETAILS IN AFFIDAVIT
AS AN INDICATOR OF AFFIANTE CREDIBILITY

See. U.S. V. MCATEE, 481 F.3d 1099, 1103
(8th Cir 2007)

IN MR RAMIREZ ALBERTO TRIAL ON
OCTOBER 8TH ~~2013~~ ²⁰¹³ TO OCTOBER ~~10~~ 13TH ~~2013~~ 2013
THIS IS MOSTLY DURING TRIAL AND DIRECT
EXAMINATION, CROSS EXAMINATION, AND
CLOSING ARGUMENT AND REBUTTAL AND
SENTENCING AND ON APPEAL AND AFTER
WHEN MR RAMIREZ HAD VARIOUS ATTORNEYS
AND AFTER HE TRIED TO FILE HABEAS ON
HIS OWN WITHIN ~~THE 1 YEAR STATUTE OF LIMITATIONS~~
TIMELY. 1 year statute of limitations
HABEAS CORPUS SHOULD BE TIMELY IN
STATE AND FEDERAL COURT.

"Comments on"
"Silence"

ON DIRECT EXAMINATION DEPUTY SANDY LOOMIS

ISSUED, UNSOLICITED COMMENT THAT HE TRIED

TO INTERVIEW RAMIREZ DID CONSTITUTE PROHIBITED
COMMENTARY ON DEFENDANT'S FIFTH AMENDMENT
RIGHT TO REMAIN SILENT. ^{protected by 14th Amendment due process clause} [BIC 38-39; SEE CD 10-8-13, 2:12:15 TO 2:12:29]

INAPPROPRIATE COMMENT ON
RAMIREZ FIFTH AMENDMENT RIGHT TO REMAIN SILENT.

[SEE CD 10-8-13 2:14:18 TO 2:14:24] SEE U.S. CONST., AMEND V
("NO PERSON... SHALL BE COMPELLED IN ANY CASE TO BE A
WITNESS AGAINST HIMSELF") POST MIRANDA STATEMENT.

// IN CLOSING ARGUMENT AND REBUTAL THE PROSECUTOR
SAID MR RAMIREZ IS A LIAR A MANIPULATOR
A MARIJUANA - THIS IS THE FIRST TIME I HAVE HEARD
THIS STORY. THE FIRST TIME ANYONE HAS HEARD THIS
STORY. THIS WAS COMMENT ON PREVIOUS POST
MIRANDA SILENCE - SEE U.S. V. AYEWOAH, 627 F.3d 914
923 (1st Cir 2010) cert denied, 132 S.Ct. 1411, 18 L.Ed.
60 (2012) FIRST WE CONDUCT A DE NOVO REVIEW TO DETERMINE
WHETHER THE PROSECUTOR'S COMMENTS IMPROPERLY CALLED ATTENTION
TO PETITIONER'S FAILURE TO TESTIFY CONSTITUTED EVIDENCE OF GUILT.
SEE U.S. V. JACKSON, 1540 F.3d 578, 897, 77 Fed. R.
EVID. SERV. 407 (7th Cir. 2008) "WHEREAS HERE ADVISOR
DEFENDANTS FAILED TO OBJECT TO THE ALLEGEDLY IMPROPER
→

COMMENT MADE, this court reviews the COMMENTS FOR plain ERROR.

See U.S. v. OLANO, 507 U.S. 725, 732-34, 113 S.Ct. 1770, 1777, 123 L.Ed. 2d 518 (1998)

See U.S. v. CARSON, 560 F.3d 566, 574 (6th Cir 2007), cert. denied, 130 S.Ct. 1048, 175 L.Ed. 2d 891 (2010)
 TO ESTABLISH plain ERROR, DEFENDANT MUST SHOW THAT
 (1) AN ERROR OCCURRED IN THE DISTRICT COURT; (2) THE ERROR WAS OBVIOUS OR CLEAR (3) THE ERROR AFFECTED DEFENDANT'S SUBSTANTIAL RIGHTS; (4) THIS ADVERSE IMPACT SERIOUSLY AFFECTED THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF THE JUDICIAL PROCEEDINGS.

See STATE v. DEGROFF, 2006 - NMSC - 011, 12, 139, N.M. 211.
 A PROSECUTOR IS NOT PERMITTED TO ELICIT STATEMENTS FROM A WITNESS THAT THE DEFENDANT INVOKED HIS RIGHT TO REMAIN SILENT.

See; STATE v. WILDEGUBE, 2003 - NMCA - 108, 23-24 134 N.M. 262 (holding that when a police officer made an unsolicited comment regarding the defendant's post miranda silence the prosecutor did not exploit the reference by asking related questions or referring to it in closing argument, there was no prosecutorial misconduct requiring reversal.

THE PROSECUTOR did refer to the post miranda SILENCE IN closing argument and REBUTAL

THERE WAS prosecutorial misconduct requiring REVERSAL

Also "prior bad acts" Evidence should NOT have been introduced and their introduction Denied the Petitioner. ~~was~~ his right to a fair trial.

Prior bad acts, Ramirez went to Fire Arms dealer to purchase gun did not remember, when, or did not have application, and Police Officer testified no application did not find Mr Ramirez

Also witnesses testified ~~was~~ ^{of} Blue window to the house

Also witness said Mr Ramirez broke car window
(Exhibit 110)

Also, Letter Rap Song Ramirez wrote Rap song about

Shooting people with AKA 47 and blast yell

Niggaz track yell Niggaz Excluded AFW need to jurors.

Also, ~~the~~ questions about head butt of a police officer.
direct exam of Ramirez.

All this was introduced was in violation of
Rule 11-404(B)

The probative value did not outweigh the prejudicial effect for which the state introduced it.

All this evidence was introduced in closing argument and rebuttal.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

TRIAL COUNSEL did not object to NONE
OF THE PROSECUTORIAL MISCONDUCT in closing
Argument And REbuttal. Comment on
Silence, Prior bad Acts, ~~and~~ IMPROPER
CHARACTER AND CREDIBILITY attack, and
IMPERMISSIBLE comment ON EXHIBIT 110 RAPING
EXCLUDED EVIDENCE. during cross EXAM & REEXAM.
DID NOT give INSTRUCTIONS ON SELF DEFENSE
to place the burden ~~on~~ of proving
Absence of self defense ON THE PROSECUTION.
See reasons, it explains it ALL.

INEFFECTIVE ASSISTANCE OF APPELLATE ATTORNEY
 THAT COUNSEL DID NOT WANT I LET APPROPRIATE ATTORNEY KNOW
 I LET HIM STEVEN J FORSBERG KNOW OF EXHIBIT
 110 RAP SING WAS OBJECTED TO READ TO JURORS AND
 THEN EXCLUDED BUT IMPOSSIBLY STILL USED IN
 CLOSING ARGUMENT AND REBUTTAL

I ALSO TOLD APPROPRIATE ATTORNEY THE FACT THAT I
 HAD BURIED A POLICE OFFICER WAS USED IN CLOSING
 ARGUMENT AND REBUTTAL. PROSECUTOR SAID ITS NOTING FOR
 RAMIREZ TO BE IN ATTENTIONS.

ALSO REFERENCE TO DEPUTY BOONIS TRIED TO INTERVIEW
 RAMIREZ RE PROSECUTOR IN CLOSING ARGUMENT
 AND REBUTTAL. CALLED MR. RAMIREZ A LIAR,
 MANIPULATOR AND SAID THIS IS THE
 FIRST TIME ANYONE HAS HEARD THIS STORY.

COMMENT ON POST MIRANDA SILENCE.
 ALSO ON MR. RAMIREZ DURING LEGAL RESEARCH CALLED
 MR. RAMIREZ A MANIPULATOR.

ALSO CALL MR. RAMIREZ A MENACE TO SOCIETY
 IN CLOSING ARGUMENT AND REBUTTAL I LET

APPROPRIATE ATTORNEY KNOW ALL THIS BEFORE
 HE FILED MY APPEAL AND I ASKED HIM
 TO LISTEN TO CLOSING ARGUMENT AND

HE SAID NO, DO IT A NOBIS CORPUS

YOURSELF! I ASKED APPROPRIATE ATTORNEY TO
 GET TRANSCRIPT FOR CLOSING ARGUMENT IT WAS
 ESSENTIAL TO EFFECTIVE APPEAL TO NO AVAIL

INEFFECTIVE ASSISTANCE OF COUNSEL. ACCORDING TO
AMANDA STEPHENSON AND LIONEL E. VERR.

I TOLD BOTH OF THEM TO REQUEST FOR CLOSING
ARGUMENT AND REBUTTAL TRANSCRIPT IT WAS
ESSENTIAL TO MY NEIGHBORS CORPUS TO NO AVAIL
I LET BOTH OF THEM KNOW OF EXHIBIT 110
RAP SAY ADMITTED READ TO JURY AND ~~ALL~~
THEN EXCLUDED OVER OBJECTION.
STILL IMPERMISSIBLE USED IN CLOSING ARGUMENT
AND REBUTTAL

I ALSO TOLD THEM BOTH OF REFERENCE OF DEPUTY
LOOMIS TRIED TO INTERVIEW DEFENDANT BY PROSECUTOR
IN CLOSING ARGUMENT AND REBUTTAL CALLED MR.
RAMIREZ A LIAR, MANGYER, AND MANIPULATOR
SAID THIS IS THE FIRST TIME ANYONE HAS HEARD
THIS STORY. ITS MY FIRST TIME AND CALLED ~~RAMIREZ~~
~~RAMIREZ~~ A MANIPULATOR, FOR DOING LEGAL RESEARCH TO
ASSIST IN HIS DEFENSE. DEFENSE OF SELF DEFENSE.

CALLED MR. RAMIREZ A MENACE TO SOCIETY
TOLD JURY MR. RAMIREZ HAD BUTTERED A POLICE
OFFICER ITS NOTING FOR HIM TO BE IN
INTERLOCATIONS, I LET THEM BOTH KNOW TO NO
AVAIL. THEY BOTH SAID DO IT YOURSELF
I'M NOT GONNA DO IT. FILE YOUR OWN NEIGHBORS

Shackness error I fell down after called
 to walk to Sheriff docket, leg was squeezed
 to table, Everyone seen me Fall down and
 my leg shocked and table move, and prosecutor
 Lind said I did not Fall then my lawyer said I
 fell and then judge said did you fall I said yes
 then I said no I tripped because
 Sheriff docket was shaking head and finger
 No and mouthing no gestures, So I said No.
 Prosecutor seen this.

This combined with all prosecutorial misconduct
 created a violation of due process and
 miscarriage of justice and fundamental error.

Im INNOCENT and the government leaves
 INNOCENT people wrongly convicted
 IN PRISON OR WHAT? What is the
 justice? Violation of the 14th and
 5th and 6th and 8th amendments! NO ONE CARES.

EXTRAORDINARY CIRCUMSTANCES
 U.S. V. MCATEE, 481 F.3d 1099, 1103, 8m.cir.2007
 Explaining the ~~the~~ INCLUSION OF SPECIFIC DETAILS
 IN AN AFFIDAVIT WAS AN INDICATOR OF
 AFFIDANT'S CREDIBILITY.

U.S. V. GABRIADON, 552 F.3d 1121, 1124 - 27 (10m
 C: 2008)

THE PETITIONER DEMONSTRATED HE WAS ENTITLED TO
 EQUIVALENT TO THE WHOLE PRISON STAFF HAD CONFISCATED
 ALL HIS LEGAL MATERIALS JUST WEEKS BEFORE
 EXPIRATION OF THE LIMITATIONS PERIOD. PETITIONER
 FILED HIS FEDERAL PETITION 22 DAYS AFTER HIS
 LEGAL MATERIALS WERE RETURNED TO HIM.
 THE COURT HELD PETITIONER EXERCISED DUE DILIGENCE
 BOTH IN PURSUING HIS LEGAL RIGHTS AND IN
 ATTEMPTING TO RETRIEVE HIS SEIZED MATERIALS.
 THE COURT REJECTED THE STATE'S ARGUMENT THAT PETITIONER
 WAS IN EQUITY FOR TOLLING SINCE HE HAD
 WAITED UNTIL LATE IN THE LIMITATIONS PERIOD.

ON Dec 6th MR. RAMIREZ Filed A motion to dismiss Federal Petition without prejudice MR. RAMIREZ KNEW he had 80 days to go BACK to State court and get back to Federal court before the 1 year Statute of Limitations ran out.

MR. RAMIREZ Filed A NEW habeas corpus petition IN 9th judicial district court on Dec. 21st 2022 Then A Supplemental on Jan 6th 2023.

MR. RAMIREZ was transferred From Lea County Correctional Facility to penitentiary OF New Mexico PNM LV 4, Dan South on Jan. 5th 2023. When he arrived he WAS NOT able to send off his other previous habeas corpus on claim of actual INNOCENCE becz Security Threw away All of his writing files + pens.

on or around 1. 25. 23 he received his order for commissary he bought pens, But on or around date →

1. 24. 23 ~~MR.~~ MR. Ramirez went to go see
 Nurse practitioner michene a trugino and was
 being verbally abusive and angry and
 to nurse ms. MARTINEZ. ~~or~~ Because they
 were forcing Ramirez to speak of sexual
 abuse in front of correctional officers
 and they were part of PREA.
 prison rape examination act.

Well on 1.5 was back to his pod
 CID VISIT told Ramirez he reported false
 PREA and disrespected female he would
 handle it. MR. RAMIREZ knew CID at
 PNM Level 4 South were bring in cigarettes,
 Suboxone for inmates to hear other
 inmates so he stayed real tight.

5 days later after 1. 24. 23 on 1. 29. 23
 inmates asked ~~when~~ Ramirez to make a
 spread some food together then after
 he ate it they told him that we
 would be on a LSD trip →

They put pee, poop, semen, sperm, drugs in his food, at 12 AM he had sores in his mouth and a semi erection

At 2 AM he called security for help and for medical help.

But before that at 7 PM he asked to report plea. Security said no wait till tomorrow. MR. Ramirez told all staff in Santa Fe, he would have his case reversed on prosecutorial misconduct and bar to retrial double jeopardy, because of miscarriage of justice and fundamental error, and jurors seen him shackled and fall and prosecutor seen Sheriff doozty tell him with gestures to say he did not fall.

MR. Ramirez told this to mental health, ^{MS. MARGO,} warden Baraguer, Security and, medical, psychology, MICHAEL A.

THUS

With Mr. Ramirez asked for help and was placed
 on suicide watch. And he had a fast heart rate,
 dizzy, could not speak or swallow, could not walk,
 was dehydrated and was scared to fall asleep
 because he knew he would die if he did.
 overdose in July 2022. Mr. Ramirez did
 lunges, ~~the~~ water, left his arms, was scared
 to fall asleep. Medicated 2am to 10am
 had an erection 2am to 5am next day
 mental health nurse said he was paranoid
 and then warden and security mental health
 said lie to state police and ~~the~~ Ramirez
 would be put in admin pod and
 given all his property and commissary
 he lied, then left on suicide watch
 then on 12.1.23 sent to New
 Central New Mexico Correctional Facility
 mental health treatment center.

Placed on suicide watch till Feb 21st 2023
 From 1.29.23- to 2.21.23.

Then Ramirez got a letter from the
 public defenders office saying he had 30 days
 to send off a petition for writ of
 certiorari and was on watch. Once
 let off watch security refused to give
 him envelopes or pens to send off the
 petition for writ of certiorari and would
 not give him his legal materials,
 petitions, exhibits, transcript, indictment,
 MR. Ramirez was denied his legal materials

Due to this extraordinary circumstance
 was unable to file his petition for
 habeas corpus with actual innocence
 sooner, and not able to file his
 petition for writ of certiorari or
 continue to Federal habeas corpus.

MR. RAMIREZ ASKED IN WRITING REQUEST
VERBAL REQUEST FOR HIS LEGAL MATERIALS
OR FOR SECURITY TO WRITE A SWORD
STATEMENT THAT THEY WOULD GIVE HIM
HIS LEGAL MATERIALS UNTIL JUNE 9TH
2023. WHILE I WAS IN A CARE CARE UNIT,
APOL, AND BPOD SNU, UNTIL HE WAS
IN CONTINUOUS CARE WITH POPULATION.

ITS ILLEGAL THATS WHY THEY WOULD ADMIT
BUT RAMIREZ WOULD BE ABLE TO SUE.

ANYWAYS. WHEN RAMIREZ ARRIVED RAMIREZ
WENT TO SEE THE TREATMENT TEAM
TOLD THEM HIS STORY AND SAID HE
WAS SUPPOSEDLY GOING TO GET OUT
MENTAL HEALTH, SECURITY, MEDICAL, AND
PSYCHIATRY ALL KNOW.

THEY DID ALL THEY COULD TO STOP
HIM FROM GETTING OUT OF PRISON. →

MR. RAMIREZ asked to report prison on an
 officer and security released and him
 took his phone to stop him from
 calling his family for help or ~~to~~ A
 Lawyer to sue, and his family to
 file the petitions at mental health
 treatment center. All treatment team
 voted to leave him in A pod and
 B pod for 4 months. From ~~2.1.23~~
 2.1.23 to 6-9-2023.

MR. RAMIREZ just send out
 the New Habeas petition
 CORPUS, with claim of actual
 INNOCENCE.

MR. RAMIREZ IS INNOCENT AND
 should be eligible for equitable
 tolling. or leave an innocent
 person in prison.

Lesser access, and
Security Refused to give him debit memos,
manila folders, and notarization and
did not. too late. It's so much to
explain not able to on appeal.

Please Grant me equitable tolling
IN my ~~bleeding~~ circumstances
that was beyond my control.

I am INNOCENT and should
be allowed to file my original
motion as if it was never
late.

MR. RAMIREZ WAS NOT ABLE TO SEND IT OFF
 SOONER DUE TO HIM NEEDED NOTIFICATIONS
 AND ~~NEED~~ PERSON WHO DOES NOTARY
 WAS ON VACATION. FROM 6-19-23
 TO 6-24-23.

MR. RAMIREZ KNOWS FOR A FACT IF
 GIVEN A NEW TRIAL HE WOULD ONLY
 BE CONVICTED OF MANSLAUGHTER OR
 2nd degree.

MR. RAMIREZ TOLD THIS TO ALL STAFF
 MEDICAL, MENTAL HEALTH, SECURITY, PSYCHIATRY
 AT PNM SOUTH LV. 4. AND CAMEL MHC

THIS WAS CORRUPTION BY A LOT OF
 PEOPLE TO PREVENT ME FROM
 GETTING OUT OF PRISON.

THIS IS A STATEMENT UNDER PENALTY
OF PERJURY STATEMENT TO THE COURTS.

I PUT MANY WRITTEN REQUEST, MADE
SEVERAL VERBAL REQUEST, FOR MY LEGAL
WORK, CONTAINING MY PETITIONS, EXHIBITS
CASE LAW, TRANSCRIPT, ~~INDICTMENT~~,
RELEVANT DOCUMENTS. despite my

REQUEST, my property ~~was not issued~~
CONTAINING THE INFORMATION WAS
NOT ISSUED TO ME FROM THE TIME

I WAS PUT ON SUICIDE WATCH IN
SANTA FE, PENITENTIARY OF NEW MEXICO LEVEL 4
PNM SOUTH 1-29-23 AND SENT TO
LOS CUNAS NM, CNMCF, MHTC, MENTAL
HEALTH TREATMENT CENTER NOT GIVEN TO ME
TILL ~~2023~~ JUNE 19th 2023.

I WAS PLACED ON SUICIDE WATCH AT
PNM LEVEL 4 SOUTH, BECAUSE INMATES

PUT SEMEN, SPERM, PRE-POOP, ALRUGGED POISONED
ME I DON'T KNOW WITH WHAT. I WAS
SCARED I ASKED FOR HELP TO MEDICAL, AND
SECURITY AT 2AM. PLACED ON SURE-DE WATCH
SENT TO MHTC. I TOLD ALL STAFF AT
DPM LO. 41 SOUTH MEDICAL, MENTAL HEALTH,
SECURITY, PSYCHIATRY MY CASE WAS GOING TO
BE REVERSED ON PROSECUTORIAL MISCONDUCT -
NUMEROUS INSTANCES AND I WAS TRYING
TO SEND ANOTHER HABEAS CORPUS TO
DISTRICT COURT FOR MY FREE STANDING CLAIM
OF ACTUAL INNOCENCE. I WOULD OF HAD
MY CASE REVERSED. ~~REVERSED~~ RELEASED ON
DOUBLE JEOPARDY. THIS IS TO SHOW
I WAS IN A CIRCUMSTANCE I HAD
NO CONTROLL OVER TO FILE MY HABEAS
CORPUS, AND PETITION FOR WRIT OF
CERTIORARI AND FEDERAL HABEAS TIMELY.

While at CMMCF / MHTC they Refused to give me ANY ENVELOPES OR PENS. To write TO Family FOR HELP OR to A lawyer, And falsly wrote me up and continued Putting me on Suicide Watch when I was NOT suicidal, homicidal, A THREAT to myself NOR ANYONE ELSE.

I Alberto RAMIREZ did NOT receive NO Request back FROM Unit MANAGER PHILIP de hererra, NOR warden NISLI NOR RIVERA asking for my legal materials, Because I would be ABLE TO SUE THEM For this. The PRISON STAFF continue to Refuse TO admit this IN writing.

I was disrespectful to Staff verbal abuse so they did not let me get out of PRISON. All Staff NEW At MHTC Psychiatry, medical, mental health, security, Now my case would be reversed prosecutorial misconduct, double jeopardy.

I AM INNOCENT OF MY CRIME.

MIGUEL MINERO, #72339, asked my brother
JOSE RAMIREZ to send me a copy of
my State habeas petition and trial transcript
of cross exam, direct examination. To no
avail the mail gets sent to Florida address
C/O Seewus digital mail center named
PO. Box 25397 TAMPA FL. 33622.
They would send the habeas back to
my family and transcript.

until sent to him by Federal court
copy, Because almost all his legal
records were lost by security, habeas
petitions, transcript, indictment,
and lost his coming to.

I MR RAMIREZ Alberto. have tried to
get copies of my medicine Records,
Psychiatric Records, And Mental Health
Records to show when I was placed
on Suicide watch And when I was
Sent to CNMCF MHRC Feb 1st 2023
And left IN A pod And B pod
UNTILL Sent to population general
Four months later, my diagnosis And
All that. to prove I have
diligently pursued my claims And
to retrieve my legal materials,
From Security STAFF And the
extraordinary circumstances
beyond MR RAMIREZ controll
to timely file petitions.

~~1~~ A person may not get his
Records only with an attorney
So I was not able to
Show that as evidence.
But I have wrote All this
IN A Sworn Statement Affidavit,
to the courts. to prove my
INNOCENCE.

IF NOT for being shipped out to
MHHC CMCFI from PNM South
Level 4. I would of filed my
Petitions on time and It would
of been timely. I would of
filed within 1 year statute of
limitations, due to the extraordinary
circumstance beyond MR Ramirez
control he was unable to file
timely. MR RAMIREZ had 60 days
Remaining on 1.29.23 to go to
N.M. Supreme court petition for writ
of Certiorari and then to go to federal
court it was all filled out ready
But denied his legal work from
1.29.23 to June 19th 2023.

I would of been found INNOCENT
 Not guilty if I would ~~of~~ have been
 Allowed to present expert testimony of
 MAXAM SWARTS AND DR FINK, IN TRIAL
 ITS LINKED TO EXCULPATORY EVIDENCE OF BEING
 Sexually Assaumed by Deceased AND Neighbor
 And why RAMIREZ Feared him. deceased.
 Also to show he was Incompetent to
 stand trial And his State of mind when
 he shot to assist IN SELF DEFENCE, defense
 at trial. MR RAMIREZ claimed SELF DEFENSE.
 See. Fairman, V. ANDERSON (1988 F.3d 635 644-45
 STNCIR 1999) CONSIDERING EVIDENCE OF SELF DEFENSE TO ESTABLISH
 ACTUAL INNOCENCE CLAIMS

MR. RAMIREZ would have been Found
 INNOCENT and only guilty of 2nd
 degree murder or MANSLAUGHTER,
 WITH VIOLATION OF HIS CONSTITUTIONAL RIGHTS
 TO A FAIR TRIAL.

I ALIBUTO JOSE RAMIREZ 69597 WHILE I WAS IN ACH AND B pod Segregation Like Environment or mental health treatment center would ask for my legal work I asked Every time people came by, warden Nesiri, and Rivera, Captain GANEY, MAJOR Jaramino, UNIFORMED PHILLIP ALVARADO, LT. ALVARO and GREGO AND SGTs BOCA RIOS, and was ignored all my request in writing ignored or verbal ignored, security want admit this because I'd be able to sue for money, So I get screwed IN my legal case and in civil case.

THIS IS UNSAY I AM INNOCENT WRONGLY CONVICTED, AND INNOCENT SELF defense. What About Justice For ALL?

From 2014 JUNE I WAS IN Level 4
Now State CASE law and only Federal case
Law and then IN 2019. The CORONAVIRUS
coronavirus, I was NOT Allowed to
do legal Research IF I could I would
NOT KNOW HOW.

I've been Level 4 SINCE 2019.
NO legal access to STATE law
OR ANY legal Research.

I am NOT a lawyer I don't
know how to do this legal
stuff. I need help. A
Lawyer. Please. Thanks

EXTRAORDINARY CIRCUMSTANCES
BEYOND MR. RAMIREZ CONTROL
FOR ALL OF MR. RAMIREZ
CLAIMS, A MISCARriage OF
JUSTICE WILL OCCUR IF ~~THE~~
THE COURTS FAIL TO ENTERTAIN
THE CLAIM, ITS FUNDAMENTAL
ERRORS PRIOR BAD ACTS,
PROSECUTORIAL MISCONDUCT,
SHEERNESS ERROR, CONVICTION ON
SILENCE, ACTUAL INNOCENCE CLAIM.

101-2-AR

Alberto Ramirez 69897

I AFFIRM ~~I~~ I diligently tried to get back my
legal materials confiscated by prison officials
ON ~~THE~~ JUN 29th 2023 TO JUNE 19th 2023
TO ~~MY~~ FILE MY habeas corpus petitions, ^{petition for writ} certiorari of
and federal habeas corpus.

MY confiscated materials, Transcript, my petitions,
Exhibits, case law, Indictment, Relevant documents
and my property mentioned was not issued to
me UNTILL JUNE 19th 2023

FOR THIS REASON MY ^{state} petitions habeas corpus and
petition for writ of ~~certiorari~~ certiorari and federal habeas
corpus documents were ~~more~~ filed LATE.

I AFFIRM UNDER PENALTY OF PERJURY under
the laws of the State of New Mexico that on
June 30th 2023

I deposited this in the mail and the
Information contained herein is true
And correct to the best of my knowledge
Information and BELIEF.

Signature Address
PNN No

Alberto Jose Ramirez 69597 June 2nd 2023

Subscribed and sworn to before me this day
of 2nd June 2023 by

NAME OF positioner Alberto Ramirez

NOTARY OF PUBLIC

Aaron Montoya

My Commission Expires, May 17, 2025

STATE OF NEW MEXICO
NOTARY PUBLIC
AARON MONTOYA
COMMISSION # 1133486
EXPIRES MAY 17, 2025

Alberto Jose Ramirez WAS NOT allowed ^{legal} materials.
THIS IS to show you. ^{He was} NOT
Allowed to have legal materials
IN A C^{or} B pod AT mental health
treatment center. Central New Mexico Corr. Fac..
I WAS NOT allowed ~~to~~ my property
from Feb 1st 2023 to ~~June 19th 2023~~ ^{June 19th 2023}
while IN A C^{or} B pod.
Signed by prisoner officer
that this IS true.

I AFFIRM under the penalty of
perjury under laws of the State of
New Mexico the INFORMATION contained
herein IS true and correct to the best
OF MY KNOWLEDGE INFORMATION & BELIEF.

Signature
Alberto Jose Ramirez

Signed by Laitner delacruz officer at central
mental health treatment center to prove my

The Following PAPER WAS TO SHOW THE COURTS
 Alberto Jose Ramirez WAS DENIED HIS legal
 materials to file his ^{state} habeas corpus, and
 petition for writ of certiorari, and Federal habeas corpus
 THE STAFF WILL NOT give a memorandum OF THIS
 BECAUSE I WOULD BE ABLE TO FILE LAW SUIT,
 ONLY THE lieutenant de la Cruz Signed his
 Signature to show I have dignity ~~and~~
 pursued my claims AND AN extraordinary
 CIRCUMSTANCE ~~and~~ OUT OF MY CONTROL OCCURRED.

THIS IS A SWORN STATEMENT UNDER PENALTY
 OF PERJURY STATEMENT TO THE COURTS. I AFFIRM
 THE INFORMATION IS TRUE TO THE BEST OF MY
 KNOWLEDGE INFORMATION AND BELIEF.

Signature

Alberto Jose Ramirez 69597 June 21st 2023

Subscribed before me this day of

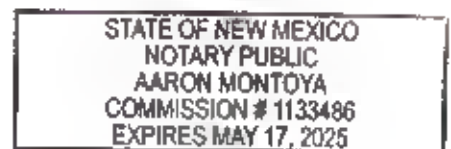
Aaron Montoya

by

NAME OF PRISONER Alberto Ramirez

NOTARY OF PUBLIC

MY COMMISSION EXPIRES, May 17, 2025



n
10/3IMiguel A. Ramiro # 72339 ^{date} 6.19.23CALLED ~~ALBERTO~~

ASKED ALBERTO JOSE RAMIRO WASH HIS

BROTHER JOSE RAMIRO TO SEND ~~ALBERTO~~ ACOPY OF ^{HIS} ~~ALBERTO~~ STATE Habeas petition and

TRIAL TRANSCRIPT OF CROSS EXAM and

direct Examination, TO NO Avail

THE MAIL GETS SENT TO CIO SECURUS

DIGITAL MAIL MAIL CENTER NMed

P.O. Box 25397 TAMPA FL 33672.

THEY WOULD SEND IT BACK TO HIS BROTHER

UNTILL HE SENT IT TO FEDERAL COURT and

THE SENT @ IT TO HIM.

BECAUSE ALMOST ALL HIS LEGAL MATERIALS

WERE LOST BY SECURITY AND CLOSING.

MR ^{Alberto} RAMIREZ DID Request his legal

materials and was denied by security
 From: 3.10.2023 to JUNE 19th 2023 I'm aware of
 while IN Central New Mexico correctional
 facility, mental health treatment center.

while he was IN acute care unit
 and SMU. B pod, and just received
 legal materials when he was moved
 to population C pod continuing
 care unit in MHIC. given population

Signed by NAME, Inmate number and date
 6-19-23

Miguel M. M. H-72339

I WAS IN ACU, B pod SMU
 and ~~ACU~~ CCU. With Alberto Ramirez
 while at MHIC (CANCE).

I WAS AN INMATE HOUSED WITH
 ALBERTO JOSE RAMIREZ AT MHIC.

A pod. B pod, and C pod population.

THIS IS A SWORN STATEMENT
UNDER PENALTY OF PERJURY STATEMENT
TO THE COURTS.

I AFFIRM THE INFORMATION CONTAINED
HERE IS TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE INFORMATION
AND BELIEF.

Signature address prison.

Subscribed and sworn to before me this
day of 21ST June 2023 by

NAME OF ^{PRISONER} ~~PRISONER~~ Miguel Minero

Notary of public Aaron Montoya

my commission expires, May 17, 2025

STATE OF NEW MEXICO
NOTARY PUBLIC
AARON MONTOYA
COMMISSION # 1133486
EXPIRES MAY 17, 2025

**NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO**

ALBERT RAMIREZ,
Petitioner,
vs.

**No. D-905-CR-2007-00434
(Hon. Drew Douglas Tatum)**

STATE OF NEW MEXICO,
JESSICA VIGIL-RICHARDS, Warden,
Respondents.

NOTICE OF 5-802(H)(1) PRE-APPOINTMENT REVIEW

The Post-Conviction/Habeas Unit of the Law Offices of the Public Defender provides notice to the Court and Counsel for Respondents of its review in accordance with Rule 5-802(H)(1), NMRA 2017 and states the following:

- 1) The Ninth Judicial Court Clerk filed the *pro se* Petition for Writ of Habeas Corpus on July 6, 2023.
- 2) Pursuant to Rule 5-802(H)(3) NMRA, this review is timely filed on or before August 21, 2023.
- 3) Per Rule 5-802(H)(1) NMRA, LOPD has reviewed the Petition and determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person's own expense.¹

Procedural History:

- 1) Petitioner filed four previous *pro se* petitions in 2017, on March 22, 2017, April 25, 2017, June 20, 2017, and July 17, 2017.

¹ Under the Indigent Defense Act, Sec. 31-16-3 (B)(3) a person has the limited right to appointed counsel representation in post-conviction matters “unless the court ... determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.” (Emphasis supplied).

- 2) On May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr.
- 3) Petitioner filed a fifth *pro se* Petition for Writ of Habeas Corpus on June 24, 2019 and an amended *pro se* Petition on August 18, 2020.
- 4) Petitioner filed his sixth *pro se* Petition for Writ of Habeas Corpus on January 9, 2023.
- 5) All prior petitions were denied.
- 6) In the instant petition, Petitioner seeks to vacate his convictions on the following grounds:
 - a. Actual innocence because the prosecutor unfairly attacked the Petitioner's credibility and Dr. Schwartz did not testify on his behalf, which ruined Petitioner's testimony that he acted upon the provocation of the victim;
 - b. Ineffective assistance of trial counsel for failing to make objections, effectively argue self-defense by presenting medical and lay witnesses such as Ricky Jaramillo, Priscilla Lopez, and his family members;
 - c. Ineffective assistance of appellate counsel for failing to argue effectively that the prosecutor unfairly attacked the Petitioner during closing and that his counsel's failure to ask for competency or self-defense instructions;
 - d. Introduction of uncharged prior bad acts at trial;
 - e. Prosecutorial misconduct for calling Petitioner a liar and a manipulator;
 - f. Due process violations for allowing the jury to see Petitioner in shackles;
 - g. Improper commentary on silence by the prosecution.
- 7) Petitioner notes that almost all of Petitioner's claims have been raised and denied in either his previous petitions or in the appeal of this case, Case No. S-1-SC-34579. Per

the Petitioner, the issue raised in the instant petition that has not been previously addressed is his “actual innocence” claim.

- 8) An “actual innocence” claim requires a Petitioner to point to newly discovered, material evidence that is not “merely impeaching or contradictory.” This new evidence must be strong enough to “probably” cause an acquittal if a new trial is granted. *See Montoya v. Ulibarri*, 2007-NMSC-035, ¶31, 142 N.M. 89; U.S. Const. Amends. VIII & XIV; N.M. Const. Art. II, §§13, 18.
- 9) In this case, the Petitioner states that he recently learned of this new claim. However, he does not point to any recently discovered material evidence. Rather, Petitioner’s claim of actual innocence appears to be that the jury would have believed his testimony that he acted in self-defense, or at least upon sufficient provocation, if (1) Dr. Schwartz and other witnesses known at the time of the trial testified,² and (2) the prosecutor had been barred from referring to the Petitioner as a liar, commenting on his silence, and mentioning other bad acts.
- 10) In other words, Petitioner is reframing the ineffective assistance of counsel and prosecutorial misconduct claims denied in his prior petitions and appeal as “actual

² Namely, the Petitioner believes that the testimony of witnesses, including Mr. Jaramillo and Ms. Lopez, regarding the heights and weights of him and the victim would have been helpful to cast doubt on the testimony of Grace Finkey. From the audio log of the trial, it appears that Ms. Finkey testified that she saw an older man fall down, saw a younger man extend his arm towards the older man, and then heard “pops.”

In her prior statement to the police, she stated that the “taller man” being chased was the man who fell down. She stated both men were thin. Mr. Ramirez appears to argue that he was taller and thinner than Mr. Robledo, so that witnesses to the fact that he was taller and thinner could have been used to discredit Mrs. Finkey’s trial testimony that Mr. Robledo was being chased. *But see Montoya*, 2007-NMSC-035, ¶31 (requiring more than impeachment or contradictory evidence to support an actual innocence claim).

innocence.” This Court and Supreme Court have already found that these alleged errors either (1) were not errors or (2) did not have a material effect on the trial. *See e.g. State v. Ramirez*, Case No. S-1-SC-34576, Dec. at ¶¶27-64 (N.M. Dec. 1, 2016).

11) Pursuant to Rule 5-802(I) NMRA, “If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to: (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.” *See also State v. Gomez*, 1991-NMCA-061, ¶ 5, 112 N.M. 313.

12) Petitioner has not asserted an intervening change in law or facts since the prior decisions by the courts.

13) It also appears that Petitioner may be arguing it was fundamental error for defense counsel to present a voluntary manslaughter defense – *i.e.*, “imperfect self-defense” – rather than a complete self-defense.

14) Per the court logs, trial counsel made a conscious decision not to pursue a self-defense instruction. He stated so on the record. Witness Ms. Finkey testified that Mr. Robledo was shot by Petitioner after Mr. Robledo fell to the ground. It also appears that Mr. Ramirez testified that he shot Mr. Robledo at least once after Mr. Robledo had fallen over, but this occurred after a physical confrontation.

15) Based on those facts, it may not have been unreasonable to pursue the more easily attainable “sufficient provocation” defense rather than total self-defense. *See State v. Chavez*, 2022-NMCA-007, ¶¶24-25, 504 P.3d 541 (noting that a step-down instruction

for voluntary manslaughter may be appropriate when the defendant was in fear of imminent danger but that a reasonable person may not have reacted in the same way); *see also Strickland v. Washington*, 466 U.S. 668, 695–98 (1984).

- 16) Regardless, at this point, to prevail on a jury instruction error, the defendant must prove that the error made his “guilt... so doubtful that it would shock the judicial conscience to allow the conviction to stand.” *See State v. Cunningham*, 2000-NMSC-009, ¶ 13, 998 P.2d 176 (defining fundamental error). In this case, that may be difficult. The jury was presented with an instruction that Mr. Ramirez was sufficiently provoked into the murder. The jury rejected that defense theory of provocation. Self-defense is essentially a more specific, harder-to-prove form of provocation. *See Chavez*, 2022-NMCA-007, ¶¶24-25.
- 17) Therefore pursuant to Rule 5-802(G)(1), the Post-Conviction Habeas Unit, Law Offices of the Public Defender, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at a person’s own expense and defers to the Court pertaining to further appropriate action.

I hereby certify that a copy of this notice was transmitted to Petitioner and Counsel for Respondent upon filing.

/s/ MATTHEW O’GORMAN
Matthew O’Gorman
LOPD Habeas

As per Rule 5-802(H)(1) NMRA 2017, undersigned counsel submits this review for the limited purpose of said procedural rule and is not Counsel of Record on this matter.

Respectfully Submitted,

/s/ MATTHEW O’GORMAN
Matthew O’Gorman
Post-Conviction Habeas Unit
Law Offices of the Public Defender
505 Marquette Ave. NW, Suite 120
Albuquerque, NM 87102
(505) 369-3588

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

**DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONER'S MOTION TO EXPAND RECORD**

THIS MATTER having come before the Court upon the *pro se* Petition for Writ of Habeas Corpus filed by the Petitioner on July 6, 2023, and the Court being fully advised, enters its *sua sponte* Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on July 6, 2023.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on August 21, 2023 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate means would

be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment.”

5. LOPD determined that Petitioner’s Petition is NOT a proceeding that a reasonable person would be willing to bring at a person’s own expense.
6. In their five (5) page Notice, LOPD notes that Petitioner has filed numerous pro se Petitions for Writ of Habeas Corpus filed by Petitioner. Petitioner’s previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017, July 17, 2017, June 24, 2019 and August 18, 2020. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner’s behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner’s Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated by reference herein as though fully set forth. Also, as to Petitioner’s Petition for Writ of Habeas Corpus filed on June 24, 2019, this Court entered a Decision and Order of Summary Dismissal on August 12, 2019 (just six days before the instant Petition was filed). Said Decision and Order of Summary Dismissal is incorporated by reference herein as though fully set forth. Moreover, Petitioner appealed his conviction. The New Mexico Supreme Court affirmed Petitioner’s conviction.
7. In their Notice, LOPD addresses the numerous issues raised by Petitioner before concluding that, “All of Petitioner’s claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34576. The only additional issue raised in the instant petition is regarding actual innocence.”

8. While addressing the applicable law related to Petitioner's indictment, LOPD determined the Petitioner failed to point out any recently discovered material evidence to support his claim of actual innocence and he is "reframing ineffective assistance of counsel and prosecutorial misconduct claims denied in his prior petitions and appeal as 'actual innocence'".
9. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
10. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
11. Rule 5-802(H) NMRA states:
 - H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:
 - (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
 - (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.
12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on August 18, 2020, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
13. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed July 6, 2023, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of law or

fact. This Court finds that the ends of justice would not be served by rehearing the claim.

14. Additionally, Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. In his current Petition, Petitioner failed to address the fact that many issues raised were the same issues decided against him on appeal and failed to provide additional, relevant facts.

15. Also, this Court finds that Petitioner's claim related to his indictment is not supported by fact or the record in this matter. Petitioner is not entitled to relief as a matter of law on such claim.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed July 6, 2023 is DISMISSED.

A handwritten signature in black ink, appearing to read 'Drew D. Tatum', is written over a horizontal line.

HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

To NEW MEXICO Supreme Court Clerk.

S-1-SC 40134

ATTENTION:

I am at mental health treatment facility
IN LOS LUJOS, NM. 87431

I am not allowed to get my property
or legal materials to mail out my
petition for writ of Habeas in time
and mail is slow being sent out.

I write to say, my petition of writ of
Habeas attached my previous petition
is being held in property. so this is
circumstances beyond my control I
ask the court to extend the time to

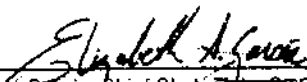
file my petition for a period not to
extend 30 days from expiration of time
otherwise provided by this rule.

SUPREME COURT OF NEW MEXICO
FILED

SEP 22 2023

EXHIBIT

ZZ


Elizabeth A. Garcia, Chief Clerk of the Supreme Court
of the State of New Mexico

IF I have it signed And sent out before
 4/8/04 - Still want name it on time
 deadline

because these people don't send legal mail out
 asap.

PLEASE let the court know of my

CIRCUMSTANCES AND SITUATION.

I was on suicide watch just got off
 last week and received my legal materials
 violation of my 14th Amendment Rights.

I am sorry. This should be
 good cause shown to extend the time
 for filing petition.

for petition for writ of habeas corpus

Sincerely

ARIBERTO
 RAMIREZ
 454642

P.O. Box 1328
 Los Lunas, NM 87031

I Alberto Ramirez 459642 did not get the order and decision or know of me 30 days to file petition for custody until Wednesday Night 9:30 PM Sept 6th 2023.

I've been asking security gets refuse to give me my property to mail out my legal mail my petition of writ of custody already filled out.

Also, the unit manager refuses to come right away to sign the decision memo to send out my legal mail and it may not be timely so I am asking for 30 days extension on filing deadline. Because of circumstances beyond Mr Ramirez control.

Thank you for your time God Bless.

S. Nery

Alberto

Ramirez

459642

9th JUDICIAL DISTRICT COURT
Curry County
8/28/2023 2:43 PM
KEVIN SPEARS
CLERK OF THE COURT

NINTH JUDICIAL DISTRICT COURT
COUNTY OF CURRY
STATE OF NEW MEXICO

ALBERT JOSE RAMIREZ,

Petitioner,

vs.

No. D-0905-CR-2007-00434

STATE OF NEW MEXICO,

Respondent.

DECISION AND ORDER OF SUMMARY DISMISSAL
AND ORDER DENYING PETITIONER'S MOTION TO EXPAND RECORD

THIS MATTER having come before the Court upon the *pro se* Petition for Writ of Habeas Corpus filed by the Petitioner on July 6, 2023, and the Court being fully advised, enters its *sua sponte* Order and FINDS:

1. Petitioner's current Petition for Writ of Habeas Corpus was filed on July 6, 2023.
2. A copy of Petitioner's Petition was sent to the Post-Conviction Habeas Unit Law Offices of the Public Defender (hereinafter referred to as "LOPD").
3. LOPD timely filed a Notice of 5-802(H)(1) Pre-Appointment Review on August 21, 2023 (hereinafter referred to as "Notice"). LOPD's Notice is incorporated by reference herein as though fully set forth.
4. Rule 5-802(H)(1) provides for a pre-appointment review of Petitioner's Petition by LOPD. LOPD may recommend that this Court order a revised petition or may indicate "whether the petition is a proceeding that a reasonable person of adequate means would

be willing to bring at a person's own expense and provide sufficient detail for further judicial review of the public defender's assessment.”

5. LOPD determined that Petitioner's Petition is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
6. In their five (5) page Notice, LOPD notes that Petitioner has filed numerous pro se Petitions for Writ of Habeas Corpus filed by Petitioner. Petitioner's previous petitions were filed on March 22, 2017, April 25, 2017, June 20, 2017, July 17, 2017, June 24, 2019 and August 18, 2020. Additionally, on May 18, 2018, an Amended Petition for Writ of Habeas Corpus was filed on Petitioner's behalf by his habeas counsel Liane Kerr. The State filed a Response and this Court held a hearing on this Amended Petition. A twelve (12) page Order Denying Petitioner's Petition for Writ of Habeas Corpus was entered on December 14, 2018. Said Order is incorporated by reference herein as though fully set forth. Also, as to Petitioner's Petition for Writ of Habeas Corpus filed on June 24, 2019, this Court entered a Decision and Order of Summary Dismissal on August 12, 2019 (just six days before the instant Petition was filed). Said Decision and Order of Summary Dismissal is incorporated by reference herein as though fully set forth. Moreover, Petitioner appealed his conviction. The New Mexico Supreme Court affirmed Petitioner's conviction.
7. In their Notice, LOPD addresses the numerous issues raised by Petitioner before concluding that, “All of Petitioner's claims have been raised in either previous petitions or in his appeal in case, S-1-SC-34576. The only additional issue raised in the instant petition is regarding actual innocence.”

8. While addressing the applicable law related to Petitioner's indictment, LOPD determined the Petitioner failed to point out any recently discovered material evidence to support his claim of actual innocence and he is "reframing ineffective assistance of counsel and prosecutorial misconduct claims denied in his prior petitions and appeal as 'actual innocence'".
9. This Court finds that LOPD provided more than sufficient detail for this Court to review its assessment.
10. This Court agrees with LOPD that this is NOT a proceeding that a reasonable person would be willing to bring at a person's own expense.
11. Rule 5-802(H) NMRA states:
 - H. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the court shall have the discretion to:
 - (1) dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and
 - (2) dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.
12. This Court finds that, in accordance with Rule 5-802(H)(1), to the extent that any new claims were raised in Petitioner's Petition for Writ of Habeas Corpus filed on August 18, 2020, that were not raised in Petitioner's prior petitions, said claims are dismissed. This Court finds that no fundamental error has occurred and that there was an adequate record available to address the claims properly at the time of the prior petitions.
13. Further, this Court finds that, in accordance with Rule 5-802(H)(2), any identical or similar claims that were raised in the Petition for Writ of Habeas Corpus filed July 6, 2023, that were previously raised and rejected in Petitioner's prior petitions, are hereby dismissed. This Court finds that there has not been an intervening change of law or


fact. This Court finds that the ends of justice would not be served by rehearing the claim.

14. Additionally, Petitioner may not seek post-conviction relief for issues raised on appeal that were decided on the merits against the Petitioner. *State v. Gomez*, 1991-NMCA-061. This is the standard rule but it has been modified to allow some leniency in allowing the issue to be brought before the Court subsequent to the appeal. However, for the Court to review the issues, the claim needs to be grounded in facts beyond the record previously presented on appeal and the petitioner must show that the additional facts are those which could not, or customarily would not, be developed in a trial on criminal charges. *Campos v. Bravo*, 2007-NMSC-021. In his current Petition, Petitioner failed to address the fact that many issues raised were the same issues decided against him on appeal and failed to provide additional, relevant facts.
15. Also, this Court finds that Petitioner's claim related to his indictment is not supported by fact or the record in this matter. Petitioner is not entitled to relief as a matter of law on such claim.

DECISION AND DISMISSAL

After examining the Petition, exhibits, prior proceedings, and based on the above reasons, this Court finds the Petitioner is not entitled to relief as a matter of law.

THEREFORE, in accordance with Rule 5-802(H)(1-2) NMRA and Rule 5-802(G)(1) NMRA, the Petition for Writ of Habeas Corpus filed July 6, 2023 is DISMISSED.



HON. DREW D. TATUM
DISTRICT JUDGE, DIVISION II

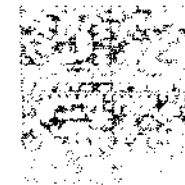
Inmate Name Alfredo Hernandez
Inmate Number 450692
CNMCF/CMRU/Unit# Mate
P.O. Drawer 1328
Los Lunas, NM 87031

Veguit
Mail

New Mexico
P.O. Box
Sandoz

8750430848 8006

Inmate Name Alfredo Ramirez
Inmate Number 450692
CNMCF/CMRU/Unit# Mate
P.O. Drawer 1328
Los Lunas, NM 87031



Legal
mail

NEW MEXICO SUPREME COURT CLERK
P.O. Box 848
Santa Fe, NM 87504-
0848

87504\$0848 8006



9-702. Petition for writ of certiorari to the district court from denial of habeas corpus.

[For use with Appellate Rule 12-501 NMRA]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Alberto Jose Ramirez
Defendant-Petitioner,

S.Ct. No. S-1-SC-40134
(leave blank; court will assign)

v.

Jessica Vigil-Richards
(Name of Warden)

District Ct. No. _____

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICO

SUPREME COURT OF NEW MEXICO
FILED

SEP 29 2023

Alberto Jose Ramirez
Defendant-Petitioner pro se
P.O. Box 1529
Los Lunas, NM 87031
(address information)

Elizabeth A. Garcia
Elizabeth A. Garcia, Chief Clerk
of the State of New Mexico

PETITION FOR WRIT OF CERTIORARI
TO THE 9th DISTRICT COURT OF NEW MEXICO

Defendant-Petitioner, appearing pro se and pursuant to the provisions of the New Mexico Constitution, Rule 5-802, and Rule 12-501 NMRA; petitions this Court to issue its Writ of Certiorari to review the order in:

Alberto Ramirez v. Jessica Vigil-Richards (your name v. Warden's name),

District Court No. 9th filed on Jan 22, 2025

QUESTIONS PRESENTED FOR REVIEW

Whether the district court erred in:

Admitting prior bad acts not objection by trial counsel
during cross examination and direct examination.
See citation regarding corpus punishment.

EXHIBIT

AAA

whether the court erred in allowing Ramirez shackled during guilt phase of trial, Ramirez fell down twice said shackles

whether district court erred when it refused to allow Mr Ramirez to testify re sexual assault by deceased and witness SAM SAID AT AGE 16 YEARS OLD. WAS THIS EVIDENCE PROPERLY EXCLUDED.

DID DISTRICT COURT ERROr SAYING EVIDENCE WAS FREQUENTLY

OR NOTING SUGGEST PSYCHOLOGIST WHO EXAMINED HIM WRITING AND TO PRESENT FULL DEFENSE AND STATE OF MIND AT TIME OF

(Complete only for issues relevant to the petition. Attach additional sheets if necessary.)

DESCRIPTION OF THE PROCEEDINGS

1. Please list the conviction being challenged:

RAVING INCLUDED IN THE FIRST DEGREE LIFE

TAMPERING WITH EVIDENCE TWO COUNTS BYES.

2. Please list any other petitions you have filed in the New Mexico Supreme Court challenging this conviction (please include docket numbers and dates):

STATE HABEAS CORPUS PETITIONS, FILED 3.22.17, 4.25.17, 6.20.17, 7.17.17, 6.24.2019, 8.18.20, 12.27.22, JAN. 10.2023.

DOCKET # ~~9-905-CR-7007-0434~~ D-905-CR-7007-0434

PETITION FOR CERTIORARI 2.5.19, NO 5-1-SC-37561, 9-13.19 NO 5-1-SC-37887. DOES NOT HAVE ANY OTHER CONFINED BY SECURITY PERSON STATE LOSS OF DESTROYED.

3. Tell the story of what happened in your court case:

I CLAIMED SELF DEFENSE THE DAY HE SHOT RIBERDO HE WENT TO HIS MOTHERS HOUSE HE ANSWERED THAT HE WAS IN HIS CH HOUSE ARGUED WITH STEP FATHER. RAMIREZ CLAIMED HE WAS STRUCK BY RIBERDO, RAMIREZ DID NOT PLEA TO THIS RIBERDO IT JUST HAPPENED WHILE DEFENDING HIMSELF FROM GRAB. RAMIREZ SAID STRUCK IN RIBERDO HANDS AT TIME OF INCIDENT. RAMIREZ LOSE HIS SLICES AND SHOT AS A RESULT OF RIBERDO ASSAULTING HIM. STEP FATHER CALLED AGENT AT THAT TIME RAMIREZ RIGHTS VIOLATED, STATE MENTION COURT. APT. AMENDMENTS AND PROTECTED BY 14 U.S. CONST ART AMEND. due process clause to FOR THAT STATE AND FEDERAL due process right

BASIS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT

The decision of the district court on my petition for writ of habeas corpus, filed pro se, raises significant questions of law under state and federal constitutions: whether the errors below deprived petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and by New Mexico Constitution, art. II, §§ 13, 14, 15, and 18.

ARGUMENT

(Describe your legal claim and cite the law (cases, statutes, constitutional sections) that supports your position. Use plain language.)

violated.
deprived
of these
rights
IN
guilt
phase
of
TRIAL

POINT 0

Please see attach pages on state habeas corpus

petition

on claims and cited law, cases, statutes

constitutional sections that support my

position on all grounds claims raised

POINT 0 (1) Equitable tolling extraordinary circumstances.

(1) Claim of actual innocence defense of state

defense claimed at guilt phase of trial.

(2) Ineffective assistance of trial counsel

(3) Ineffective assistance of appellate attorney.

POINT 0 (4) prior bad acts

(5) prosecutorial misconduct

(6) comment on silence post Miranda silence

(7) Snickers error.

Please see attached pages.

(8) Extraordinary circumstances, equitable tolling

(Attach additional sheets, if necessary).

REQUEST FOR RELIEF

Defendant-petitioner requests that this Court issue its writ of certiorari to the district court, and:

- (✓) remand to the district court for a full hearing on the petition, OR
- (✓) reverse the conviction, OR
- () remand to the district court to correct the sentence, OR
- () (other) appoint habeas corpus appellate attorney and provide

trial closing argument and resultant transcript, provide directly.

Petitioner asks this Court to grant such relief as may be appropriate. As required by Rule 12-501 NMRA, I am filing only the original copy of this petition and I have attached the following:

- (✓) a copy of my petition for writ of habeas corpus filed in district court, AND
- (✓) a copy of the state's response, if one was filed, AND
- (✓) a copy of the district court's order.

I have not attached the required documents because

I will send them once I make copies or I did

not have them to send them.

and ask the Supreme Court to accept this petition without the attachments.

Respectfully submitted,

Alberto Jose Ramirez
Defendant-Petitioner, pro se

VERIFICATION

STATE OF NEW MEXICO
COUNTY OF Curry

I, the undersigned, being first duly sworn upon my oath, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. On Sept 15th 2023 (date), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the New Mexico Supreme Court at the following address:

New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico, 87504-0848.

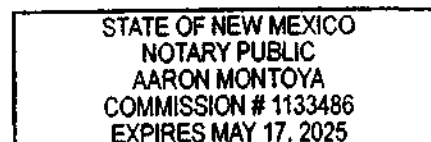
Alberto Jose Ramirez
(Signature)
PO Drawer 1313
(Address) Las Alamos, NM 87831
PNM No., if applicable

SUBSCRIBED AND SWORN TO before me this 2/5th day of June, 2023, by

Alberto Ramirez
(Name of petitioner)

Aaron Montoya
Notary Public

May 17, 2025
My Commission Expires



CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition was mailed to the Attorney General's Office, P.O. Box 1508, Santa Fe, New Mexico 87504-1508 on this 15th day of September, 2023.

Alberto Ramirez
Defendant-Petitioner, pro se

[Adopted by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**November 20, 2023****NO. S-1-SC-40134****ALBERTO JOSE RAMIREZ,**

Petitioner,

v.

JESSICA VIGIL RICHARDS, Warden,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Justice Michael E. Vigil, Justice David K. Thomson, and Justice Julie J. Vargas concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 20th day of November, 2023.

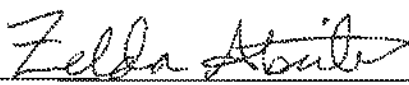
Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on this date filed.

Zelda Abaita

Clerk of the Supreme Court
of the State of New Mexico


Deputy Clerk**EXHIBIT**

BBB

REGISTER OF ACTIONS

CASE NO. D-905-CR-2007-00434

STATE OF NEW MEXICO (DA) v. Albert Ramirez

§
§
§
§
§
§

Case Type: **Felony Homicide**
Date Filed: **07/20/2007**
Location:
Judicial Officer: **Tatum, Drew D.**

RELATED CASE INFORMATION

Related Cases

- S-1-SC-34576 (Appealed - District Court)
- S-1-SC-36599 (Appealed - District Court)
- S-1-SC-37501 (Appealed - District Court)
- S-1-SC-37887 (Appealed - District Court)
- S-1-SC-38539 (Habeas - Appealed)
- S-1-SC-40134 (Appealed - District Court)
- D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Defendant Ramirez, Albert

Male
4' 2", 77 lbs

Attorneys
Matthew J. O'Gorman
Public Defender
505-835-2113(W)

Alberto Ramirez
C/O Lea County Correctional Facility
6900 W. Miller Dr.
Hobbs, NM 88244
DL: NM505115058

~~Pro Se~~Amanda Marie
Stephenson
Retained
(505)-369-3612(W)

Jesse R. Cosby
Court Appointed
575-208-1655 x10704(W)

Liane E. Kerr
Court Appointed
505-848-9190(W)

Matthias Swonger
Public Defender
505-369-3581(W)

Sarah G. Gallegos
Public Defender
505-219-2884(W)

Sarah Plazola
Public Defender
505-767-6118(W)

Plaintiff STATE OF NEW MEXICO (DA)

CLOVIS NM 88101

Andrea Rowley Reeb
(575)-219-9687(W)

Matthew E. Chandler
(806)-368-8712(W)

CHARGE INFORMATION

Charges: Ramirez, Albert

- 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE)
- 2. TAMPERING WITH EVIDENCE
- 3. TAMPERING WITH EVIDENCE

Statute	Level	Date
30-2-1(A)(1)	Capital Felony	07/12/2007
30-22-5	3rd Degree Felony	07/12/2007
30-22-5	3rd Degree Felony	07/12/2007

EXHIBIT

DS1

EVENTS & ORDERS OF THE COURT

	DISPOSITIONS
01/26/2009	Disposition (Judicial Officer: Hartley, Teddy L.) 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) CRB: GUILTY/NO CONTEST PLEA
01/26/2009	Disposition (Judicial Officer: Hartley, Teddy L.) 2. TAMPERING WITH EVIDENCE CRB: DISMISS BY JUDGE/NOT RULE
01/26/2009	Disposition (Judicial Officer: Hartley, Teddy L.) 3. TAMPERING WITH EVIDENCE CRB: DISMISS BY JUDGE/NOT RULE
01/26/2009	Plea (Judicial Officer: Hartley, Teddy L.) 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) Guilty
01/26/2009	Sentenced (Judicial Officer: Hartley, Teddy L.) 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) Converted Disposition: DNA Identification Fee 0.00 Sentenced on 02-03-2009 Count 1-1 Non-Collectable. Sentenced: \$100.00 ASM: DV TREATMENT FEE 5.00 Sentenced on 02-03-2009 Count 1-1 Sentenced: \$5.00
01/08/2014	Plea (Judicial Officer: Hartley, Teddy L.) 2. TAMPERING WITH EVIDENCE Guilty 3. TAMPERING WITH EVIDENCE Guilty
01/08/2014	Amended Plea (Judicial Officer: Hartley, Teddy L.) Reason: Charges Refiled 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) Guilty
01/08/2014	Amended Disposition (Judicial Officer: Hartley, Teddy L.) Reason: Remanded 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) Conviction
01/08/2014	Amended Disposition (Judicial Officer: Hartley, Teddy L.) Reason: Remanded 2. TAMPERING WITH EVIDENCE Conviction
01/08/2014	Amended Disposition (Judicial Officer: Hartley, Teddy L.) Reason: Remanded 3. TAMPERING WITH EVIDENCE Conviction
01/08/2014	Amended Sentenced (Judicial Officer: Hartley, Teddy L.) Reason: Remanded 1. MURDER IN THE FIRST DEGREE (WILLFUL & DELIBERATE) Converted Disposition: DNA Identification Fee 0.00 Sentenced on 02-03-2009 Count 1-1 Non-Collectable. Sentenced: \$100.00 ASM: DV TREATMENT FEE 5.00 Sentenced on 02-03-2009 Count 1-1 Sentenced: \$5.00 Condition - Adult: 1. Other, Mental and Physical health as available. 01/08/2014, Active 01/08/2014
01/08/2014	Sentenced (Judicial Officer: Hartley, Teddy L.) 2. TAMPERING WITH EVIDENCE
01/08/2014	Sentenced (Judicial Officer: Hartley, Teddy L.) 3. TAMPERING WITH EVIDENCE
	OTHER EVENTS AND HEARINGS
07/20/2007	OPN: GRAND JURY INDICTMENT (Judicial Officer: Hartley, Teddy L.) MAGISTRATE COURT NUMBER M-12-FR-200700389
07/20/2007	NTC: HEARING (ARRAIGNMENT) ARRAIGNMENT JULY 30, 2007 @ 10:45 AM HARTLEY
07/30/2007	TAP: ARRAIGNMENT COURTROOM 1 CD 10:48:56 ARRAIGNMENT 07/30/07 RODRIGUEZ/HARTLEY
07/30/2007	Arraignment/Plea Hearing (9:00 AM) (Judicial Officer Hartley, Teddy L.) CD 10:48:56 CTRM1 ARRAIGNMENT RODRIGUEZ/HARTLEY Result: Held
07/31/2007	MEMORANDUM OF ARRAIGNMENT (Judicial Officer: Hartley, Teddy L.) ORDER ON ARRAIGNMENT AND ORDER SETTING CONDITIONS OF RELEASE NO BOND PRETRIAL: 12/10/07 @ 1:30 PM JURY TRIAL: 1/7/08 @ 9:00 AM
08/14/2007	ENTRY OF APPEARANCE (Judicial Officer: Hartley, Teddy L.) AND SPEEDY TRIAL DEMAND [PUBLIC DEFENDER DEPARTMENT ENTERS APPEARANCE]
08/14/2007	MTN: TO RECONSIDER/ REVIEW (Judicial Officer: Hartley, Teddy L.) TO REVIEW CONDITIONS OF RELEASE
08/27/2007	DISCOVERY (Judicial Officer: Hartley, Teddy L.) NOTICE OF DISCLOSURE CERTIFICATE OF DISCLOSURE OF INFORMATION DEMAND FOR NOTICE OF ALIBI
08/27/2007	WITNESS LIST STATE'S
08/27/2007	NTC: OF INTENT (Judicial Officer: Hartley, Teddy L.) TO SEEK FIREARM ENHANCEMENT

08/27/2007 **NTC: OF INTENT** (Judicial Officer: Hartley, Teddy L.)
TO SEEK AGGRAVATION OF SENTENCE

08/28/2007 **NTC: HEARING (PRETRIAL CONFERENCE)**
PRETRIAL CONFERENCE 12/10/07 @ 1:30 PM HARTLEY

08/28/2007 **NTC: HEARING (JURY TRIAL)** (Judicial Officer: Hartley, Teddy L.)
JURY TRIAL JANUARY 7-11, 2008 @ 9:00 AM HARTLEY

08/31/2007 **SUBPOENA RETURNED**
SECRETARY FOR WALDO CASAREZ SERVED 08/29/07

08/31/2007 **SUBPOENA RETURNED**
SECRETARY FOR DEPUTY SANDY LOOMIS SERVED 08/29/07

09/05/2007 **SUBPOENA RETURNED**
SAM SAIZ SERVED 9/3/07

09/05/2007 **SUBPOENA RETURNED**
DEBRA RAMIREZ SERVED 9/3/07

09/05/2007 **SUBPOENA RETURNED**
BRENT AGUILAR (CPD) SERVED 8/31/07

09/05/2007 **SUBPOENA RETURNED**
LT ROGER GRAH (CPD) SERVED 8/31/07

09/05/2007 **SUBPOENA RETURNED**
DETECTIVE MAX STANSELL (CPD) SERVED 8/31/07

10/09/2007 **MTN: TO RECONSIDER/ REVIEW** (Judicial Officer: Hartley, Teddy L.)
MOTION TO REVIEW CONDITIONS OF RELEASE

10/11/2007 **MTN: FOR CONTINUANCE** (Judicial Officer: Hartley, Teddy L.)

10/11/2007 **MTN: MOTION/ PETITION TO EXTEND TIME**

10/16/2007 **ORD: OF CONTINUANCE** (Judicial Officer: Hartley, Teddy L.)
JURY TRIAL SET JANUARY 7 - 11, 2008 SHALL BE CONTINUED

10/23/2007 **ORD: DISTRICT COURT EXTENSION GRANTED** (Judicial Officer: Hartley, Teddy L.)
TO INCLUDE 07/30/07

10/25/2007 **NTC: HEARING (JURY TRIAL)** (Judicial Officer: Hartley, Teddy L.)
AMENDED MARCH 10 - 14, 2008 @ 9:00 AM

10/29/2007 **WITNESS LIST**
AMENDED WITNESS LIST

11/05/2007 **SUBPOENA RETURNED**
KEVIN STREINE SERVED 11/05/07

11/05/2007 **SUBPOENA RETURNED**
SPECIAL AGENT DAVID LOERA SERVED 10/05/07

11/05/2007 **SUBPOENA RETURNED**
WALDO CASAREZ SERVED 11/02/07

11/05/2007 **SUBPOENA RETURNED**
DEPUTY SANDY LOOMIS SERVED 11/02/07

11/05/2007 **SUBPOENA RETURNED**
KEITH BESSETTE SERVED 11/02/07

11/06/2007 **SUBPOENA RETURNED**
DAN AGUILAR SERVED 11/6/07

11/08/2007 **SUBPOENA RETURNED**
KAREN CASILLAS SERVED 11/04/07

11/08/2007 **SUBPOENA RETURNED**
MONA GONZALES SERVED 11/07/07

11/08/2007 **SUBPOENA RETURNED**
SANDY KIRBY OR DESIGNEE SERVED 11/07/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR ROBBIE TELLES SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR DETECTIVE MAX STANSELL SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR RAFAEL AGUILAR SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR BRENT AGUILAR SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR DALE RICE SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR WAYLON RAINS SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR RANDY PITCOCK SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR OFFICER ERIC MULLER SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR JAY LONGLEY SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR LT RON HUTCHISON SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR LT ROGER GRAH SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR BRIAN ENCINIAS SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR ROBERT DENNEY SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR TONY BOSQUE SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR CHARLIE AGUIRRE SERVED 1/06/07

11/14/2007 **SUBPOENA RETURNED**
CPD FOR RICKY SMITH SERVED 11/06/07

11/14/2007 **SUBPOENA RETURNED**
JERRY WIKE (CPD) SERVED 11/6/07

11/14/2007 **SUBPOENA RETURNED**
STEVEN WRIGHT (CPD) SERVED 11/6/07

11/14/2007 **SUBPOENA RETURNED**
EMT KAREN BURNS (CFD) SERVED 11/6/07

11/14/2007 **SUBPOENA RETURNED**
WENDALL BLAIR (CPD) SERVED 11/6/07

11/14/2007 **SUBPOENA RETURNED**
OFFICER DAVID WETMORE (CPD) SERVED 11/6/07

11/16/2007 **SUBPOENA RETURNED**
GRACE FINKEY SERVED 11/10/07

11/26/2007 **SUBPOENA RETURNED**
GLORIA MASSEY SERVED 11/25/07

12/04/2007 **SUBPOENA RETURNED**
PRISCILLA LOPEZ SERVED 11/29/07

12/04/2007 **SUBPOENA RETURNED**
SENOVIA SAIZ SERVED 11/29/07

12/04/2007 **SUBPOENA RETURNED**
DEBRA RAMIREZ SERVED 11/29/07

12/04/2007 **SUBPOENA RETURNED**
SAM SAIZ SERVED 11/29/07

12/06/2007 **SUBPOENA RETURNED**
PLATEAU RECORDS GUARDIAN SERVED 12/4/07

12/10/2007 **TAP: PRETRIAL**
CD 1:28:47 CTRM1 PRETRIAL CONFERENCE RODRIGUEZ/HARTELY

12/10/2007 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
CCDC DISPOSITION SHEET

12/10/2007 **Pretrial Conference/Plea Hearing/Docket Call** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
Result: Held

12/11/2007 **ORD: PRETRIAL HEARING SCHEDULED** (Judicial Officer: Hartley, Teddy L.)
ORDER ON PRETRIAL CONFERENCE PRETRIAL SET FOR 2/6/08 TRIAL SET FOR 3/10-14/08 NO BOND

12/11/2007 **SUBPOENA RETURNED**
VICTOR CANSINO SERVED VIA FAX 12/11/07

12/13/2007 **SUBPOENA RETURNED**
DENNIS FITE SERVED 12/11/07

12/19/2007 **NTC: HEARING (PRETRIAL CONFERENCE)**
PRETRIAL CONFERENCE 1/25/08 @ 10:30 AM HARTLEY

12/27/2007 **NTC: HEARING (JURY TRIAL)** (Judicial Officer: Hartley, Teddy L.)
AMENDED NOTICE MARCH 10 - 14, 2008 @ 9:00 AM

12/28/2007 **NTC: NOTICE**
NOTICE OF DEFENSE

01/02/2008 **WITNESS LIST**
SECOND AMENDED STATE'S

01/02/2008 **SUBPOENA RETURNED**
DR ROSS REICHARD SERVED VIA FAX 12/27/07

01/04/2008 **MTN: MOTION** (Judicial Officer: Hartley, Teddy L.)
MOTION TO EXCLUDE DEFENSE FOR UNTIMELY FILING ON NOTICE

01/07/2008 **Jury Trial** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
Result: Continued

01/14/2008 **RESPONSE** (Judicial Officer: Hartley, Teddy L.)
RESPONSE TO STATE'S RESPONSE TO NOTICE OF DEFENSE

01/14/2008 **NTC: OF FILING**
NOTICE OF FILING TO DETERMINE COMPETENCY OF THE DEFENDANT TO STAND TRIAL

01/24/2008 **SUBPOENA RETURNED**
JAMES PATTERSON SERVED 1/18/08

01/25/2008 **TAP: PRETRIAL**
1/25/08 CD 10:32:58 CTRM1 PRETRIAL RODRIGUEZ/HARTLEY

01/28/2008 **ORD: PRETRIAL HEARING SCHEDULED** (Judicial Officer: Hartley, Teddy L.)
ORDER ON PRETRIAL CONFERENCE TRIAL: 3/10/08

01/31/2008 **NTC: HEARING (CRIMINAL)**
STATUS HEARING 2/27/08 @ 9:00 AM HARTLEY

02/27/2008 **TAP: STATUS CONFERENCE**
COURTROOM 1 CD 8:58:50 STATUS HEARING 02/27/08 RODRIGUEZ/HARTLEY

02/27/2008 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
STATUS HEARING FEBRUARY 27, 2008 @ 9:00 AM
Result: Held

03/10/2008 **Jury Trial** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
MARCH 10 - 14, 2008 @ 9:00 AM
Result: Continued

04/10/2008 **REQUEST FOR HEARING/ SETTING** (Judicial Officer: Hartley, Teddy L.)
REQUEST FOR COMPETENCY HEARING

04/17/2008 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
ORDER FOR COMMITMENT TO THE NEW MEXICO BEHAVIORAL HEALTH INSTITUTE AT LAS VEGAS FOR TREATMENT TO ATTAIN
COMPETENCY TO STAND TRIAL

08/28/2008 **SUBPOENA RETURNED**
DR JOANNE BURNES SERVED 8/27/08

08/29/2008 **NTC: HEARING (CRIMINAL)**
COMPETENCY HEARING SEPTEMBER 15, 2008 @ 1:30 PM HARTLEY

09/15/2008 **TAP: HEARING**
COURTROOM 1 CD 1:36:52 COMPETENCY HEARING 09/15/08 HILL/HARTLEY

09/15/2008 **EXHIBIT RECEIPT** (Judicial Officer: Hartley, Teddy L.)

09/15/2008 **Competency Hearing** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
SEPTEMBER 15, 2008 @ 1:30 PM HARTLEY
Result: Held

09/16/2008 **ORD: COMPETENT** (Judicial Officer: Hartley, Teddy L.)
DEFENDANT IS NOW COMPETENT TO STAND TRIAL SHALL BE HELD IN CCDC WITHOUT BOND PENDING TRIAL

09/23/2008 **SUBPOENA RETURNED**
CCADC SERVED 9/19/08

09/23/2008 **NTC: HEARING (PRETRIAL CONFERENCE)**
PRETRIAL CONFERENCE 12/1/08 @ 1:30 PM HARTLEY

09/23/2008 **NTC: HEARING (JURY TRIAL)** (Judicial Officer: Hartley, Teddy L.)
JURY TRIAL JANUARY 26-30, 2009 @ 8:30 AM HARTLEY

11/17/2008 **WITNESS LIST**
STATE'S 3RD ADDITIONAL

11/20/2008 **WITNESS LIST**
AMENDED STATE'S

11/24/2008 **SUBPOENA RETURNED**
ROGER GRAH SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
LYNDELL STANSELL SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
WENDALL BLAIR SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
ROBERT DENNEY SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
CHARLIE AGUIRRE SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
RAFAEL AGUILAR SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
BRENT AGUILAR SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
RANDY PITCOCK SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
JOHNNY ZAMORA SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
SAM SAIZ SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
PLATEAU RECORDS CUSTODIAN SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
GLORIA MASSEY SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
MONICA PROVOLT SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
JAMES PROVOLT SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
VICKY TUBBS SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
RAYMOND ATCHLEY SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
JANICE DAVIS SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
VICTOR CANSINO SERVED 11/21/08

11/24/2008 **SUBPOENA RETURNED**
KEVIN STREINE SERVED 11/21/08

11/24/2008 **SUBPOENA RETURNED**
ROSS REICHARD SERVED 11/21/08

11/24/2008 **SUBPOENA RETURNED**
JOANNE BURNES SERVED 11/21/08

11/24/2008 **SUBPOENA RETURNED**
DAVID LOERA SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
DAN AGUILAR SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
SANDY KIRBY SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
THERESA LEVACY SERVED 11/24/08

11/24/2008 **SUBPOENA RETURNED**
MONA GONZALES SERVED 11/24/08

11/25/2008 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
ORDER FOR GRAND JURY TAPES FROM 07/20/07

11/25/2008 **SUBPOENA RETURNED**
DENNIS FATE SERVED 11/24/08

11/25/2008 **SUBPOENA RETURNED**
SANDY LOOMIS SERVED 11/24/08

11/25/2008 **SUBPOENA RETURNED**
WALDO CASAREZ SERVED 11/24/08

11/26/2008 **WITNESS LIST**
AMENDED STATE'S

11/26/2008 **SUBPOENA RETURNED**
PRISCILLA LOPEZ SERVED 11/25/08

12/01/2008 **TAP: PRETRIAL**
12/1/08 CD 1:30:35 CTRM1 PRETRIAL CONFERENCE & PENDING MOTIONS HARTLEY/RODRIGUEZ

12/01/2008 **ORD: PRETRIAL HEARING SCHEDULED** (Judicial Officer: Hartley, Teddy L.)

12/01/2008 **Pretrial Conference/Plea Hearing/Docket Call** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
PRETRIAL CONFERENCE 12/1/08 @ 1:30 PM HARTLEY

Result: Held

12/08/2008 **SUBPOENA RETURNED**
CRIMSON MAES SERVED 12/05/08

12/08/2008 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
ON DISCOVERY

12/08/2008 **SUBPOENA RETURNED**
DALE RICE SERVED 12/5/08

12/08/2008 **SUBPOENA RETURNED**
KAREN CASILLAS SERVED 12/5/08

12/08/2008 **SUBPOENA RETURNED**
RICKY JARAMILLO SERVED 12/5/08

12/08/2008 **SUBPOENA RETURNED**
HESQUIA RARMIEZ SERVED 12/5/08

12/08/2008 **SUBPOENA RETURNED**
GRACE FINKEY SERVED 12/4/08

01/12/2009 **SUBPOENA RETURNED**
JOE RAMIREZ SERVED 1/10/09

01/12/2009 **SUBPOENA RETURNED**
DEBRA RAMIREZ SERVED 1/10/09

01/12/2009 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

01/12/2009 **SUBPOENA RETURNED**
IVA VASQUEZ SERVED 1/12/09

01/12/2009 **WITNESS LIST**
ADDITIONAL

01/13/2009 **WITNESS LIST**
ADDITIONAL

01/13/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/13/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/13/2009 **MTN: MOTION** (Judicial Officer: Hartley, Teddy L.)
DEFENDANT'S MOTION TO EXCLUDE THE INTRODUCTION OF ALL PHOTOGRAPHS OF THE DECEASED AT TRIAL

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/14/2009 **MTN: IN LIMINE** (Judicial Officer: Hartley, Teddy L.)

01/15/2009 **WITNESS LIST**
ADDITIONAL

01/15/2009 **TAP: REVIEW**
COURTROOM 1 CHAMBERS CD 3:28:15 PRE-TRIAL REVIEW HEARING 01/15/09 @ 4:15 PM HILL/HARTLEY

01/26/2009 **TAP: JURY TRIAL**
1/26/09 CD 8:56:07 CTRM1 (CHAMBERS) PEREMPTORY CHALLENGES/PLEA & DISPOSITION HARTLEY/RODRIGUEZ

01/26/2009 **TAP: JURY TRIAL**
1/26/09 CD 9:06:26 CTRM1 JURY TRIAL HARTLEY/RODRIGUEZ

01/26/2009 **PLEA & DISPOSITION AGREEMENT** (Judicial Officer: Hartley, Teddy L.)
Guilty plea

01/26/2009 **Jury Trial** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
JURY TRIAL JANUARY 26-30, 2009 @ 8:30 AM HARTLEY
Result: Settled Plea/ During Trial

02/03/2009 **CLS: GUILTY PLEA/ JUDGMENT** (Judicial Officer: Hartley, Teddy L.)

02/03/2009 **NTC: ENTRY OF JUDGMENT**

02/25/2009 **MTN: TO WITHDRAW** (Judicial Officer: Hartley, Teddy L.)
MOTION TO WITHDRAW PLEA OF GUILTY

03/02/2009 **NTC: HEARING (CRIMINAL)**
NOTICE OF HEARING FRIDAY 04/24/2009 10:30 AM MOTION TO WITHDRAW PLEA

03/16/2009 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

03/16/2009 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)
ORDER TO TRANSPORT DEFENDANT

04/24/2009 **Motion Hearing** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
FRIDAY 04/24/2009 10:30 AM MOTION TO WITHDRAW PLEA
Result: Continued

05/26/2009 **NTC: HEARING (CRIMINAL)**
NOTICE OF HEARING ON MOTION TO WITHDRAW PLEA; HEARING SET FOR 06/25/09 @ 10:30 AM JUDGE HARTLEY

05/28/2009 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)
ORDER TO TRANSPORT DEFENDANT

06/25/2009 **TAP: MOTION**
COURTROOM 2 6-25-09 AT 10:39:14AM MOTION TO WITHDRAW PLEA HARTLEY/RODRIGUEZ

06/25/2009 **Motion Hearing** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
RE;NOTICE OF HEARING FILED 05/26/09; MOTION TO WITHDRAW PLEA 06/25/09 @ 10:30 PM JUDGE HARTLEY
Result: Held

07/29/2009 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
ORDER ON MOTION WITHDRAW PLEA OF GUILTY THEREFORE ORDERED THAT DEFENSE'S MOTION TO WITHDRAW PLEA OF GUILTY IS DENIED.

08/07/2009 **MTN: MOTION/APPLICATION FOR FREE PROCESS** (Judicial Officer: Hartley, Teddy L.)
MOTION FOR APPOINTMENT OF COUNSEL AND FREE PROCESS

08/07/2009 **ORD: FOR FREE PROCESS** (Judicial Officer: Hartley, Teddy L.)
ORDER APPOINTING COUNSEL & ALLOWING FREE PROCESS APPOINTMENT OF OFFICE OF PUBLIC DEFENDER

08/07/2009 **NTC: OF APPEAL TO COURT OF APPEALS/ SUPREME COURT**
NOTICE OF APPEAL FILED BY BRETT CARTER

10/02/2009 **DOCKETING STATEMENT / COURT OF APPEALS**
DOCKETING STATEMENT FILED BY PUBLIC DEFENDER

10/14/2009 **CERTIFICATE**
CLERK'S CERTIFICATE

10/26/2009 **APPEAL CALENDAR NOTICE**
GENERAL CALENDAR NOTICE

10/30/2009 **EXHIBIT DESIGNATION** (Judicial Officer: Hartley, Teddy L.)
DESIGNATION OF DOCUMENTS ON APPEAL FILED BY BRETT CARTER

07/06/2011 **RPN: MANDATE/REOPEN** (Judicial Officer: Hartley, Teddy L.)
DEFENDANT'S PLEA WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY AND THAT THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING DEFENDANT'S MOTION TO WITHDRAW HIS PLEA WE REVERSE AND REMAND FOR PROCEEDINGS CONSISTENT WITH THIS OPINION

08/10/2011 **NTC: HEARING (CRIMINAL)**
STATUS HEARING AUG 18, 2011 @ 10:00 AM HARTLEY

08/11/2011 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

08/18/2011 **TAP: STATUS CONFERENCE**
COURTROOM 1 CD 9:59:50 STATUS CONF 08/18/11 RODRIGUEZ/HARTLEY

08/18/2011 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
AUG 18, 2011 @ 10:00 AM HARTLEY
Result: Held

08/25/2011 **ORD: WITHDRAWAL/ SUBSTITUTION OF COUNSEL**
BRETT CARTER WITHDRAWS JESSE COSBY SUBSTITUTES AS COUNSEL FOR DEFENDANT

08/25/2011 **NTC: REQUEST/ DEMAND FOR DISCOVERY** (Judicial Officer: Hartley, Teddy L.)

08/25/2011 **DEMAND FOR SPEEDY TRIAL**

08/30/2011 **NTC: HEARING (CRIMINAL)**
STATUS HEARING 9-12-11 AT 10:45AM HARTLEY

09/06/2011 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
DEFENDANT IS ALLOWED TO WITHDRAW FROM THE PLEA

09/12/2011 **TAP: STATUS CONFERENCE**
COURTROOM 1 CD 10:48:22 STATUS CONF 09/12/11 RODRIGUEZ/HARTLEY

09/12/2011 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
10:45AM HARTLEY
Result: Held

09/22/2011 **MTN: PSYCHIATRIC/DIAGNOSTIC EVAL** (Judicial Officer: Hartley, Teddy L.)
MTN FOR MENTAL EVALUATION

09/26/2011 **ORD: PSYCHIATRIC/ DIAGNOSTIC EVALUATION** (Judicial Officer: Hartley, Teddy L.)
EX PARTE

12/21/2011 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

01/06/2012 **MTN: MOTION** (Judicial Officer: Hartley, Teddy L.)
STATE'S MOTION TO RECONSIDER TRANSPORT ORDER AND REQUEST FOR COMPLIANCE WITH RULES 5-120 AND 5-121

01/11/2012 **ORD: ORDER** (Judicial Officer: Hartley, Teddy L.)
TRANSPORT ORDER FILED DECEMBER 21, 2011 IS HEREBY WITHDRAWN AND WILL BE RECONSIDERED AT A LATER DATE

03/05/2012 **NTC: HEARING (CRIMINAL)**
STATUS HEARING MARCH 9, 2012 (TRAILING) 10:45 AM 15 MIN HARTLEY

03/09/2012 **TAP: STATUS CONFERENCE**
COURTROOM ONE 3-9-12 AT 10:47:57AM STATUS HARTLEY/RODRIGUEZ

03/09/2012 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
STATUS HEARING MARCH 9, 2012 (TRAILING) 10:45 AM 15 MIN HARTLEY
Result: Held

03/15/2012 **ORD: PSYCHIATRIC/ DIAGNOSTIC EVALUATION** (Judicial Officer: Hartley, Teddy L.)

03/15/2012 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

05/30/2012 **NTC: HEARING (CRIMINAL)**
STATUS JUN 25, 2012 @ 2:30 PM HARTLEY

06/25/2012 **TAP: STATUS CONFERENCE**
COURTROOM 1 6-25-12 AT 2:39:30PM STATUS HARTLEY/RODRIGUEZ

06/25/2012 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
STATUS JUN 25, 2012 @ 2:30 PM HARTLEY
Result: Held

07/06/2012 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)
AMENDED

07/06/2012 **NTC: HEARING (CRIMINAL)**
STATUS AUG 31, 2012 @ 10:00 AM HARTLEY

08/29/2012 **NTC: HEARING (CRIMINAL)**
COMPETENCY HEARING 10-9-12 AT 9AM HARTLEY

08/30/2012 **SUBPOENA RETURNED**
DOUGLAS DAVIS SERVED 08/29/12

08/31/2012 **Status Hearing/ Conference** (9:00 AM) (Judicial Officer Hartley, Teddy L.)
AUG 31, 2012 @ 10:00 AM HARTLEY

09/27/2012 **NTC: HEARING**
Competencing hearing Dec 3, 2012 @ 2:30 pm Hartley

10/09/2012 **CANCELED Competency Hearing** (1:00 PM) (Judicial Officer Hartley, Teddy L.)
*Scheduling Error
Scheduled for morning only
10/09/2012 Reset by Court to 10/09/2012*

10/15/2012 **ORD: TO TRANSPORT**

11/26/2012 **MTN: FOR CONTINUANCE**

11/27/2012 **ORD: OF CONTINUANCE**
12-3-12 competency hearing continued

12/03/2012 **CANCELED Competency Hearing** (2:30 PM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted

02/01/2013 **NTC: HEARING**
Status Conference - March 29, 2013 at 1:30pm Hartley

02/11/2013 **ORD: TO TRANSPORT** (Judicial Officer: Hartley, Teddy L.)

03/01/2013 **ORD: COMPETENT** (Judicial Officer: Hartley, Teddy L.)

03/04/2013 **REQUEST FOR HEARING/ SETTING**

03/29/2013 **CANCELED Status Conference** (1:30 PM) (Judicial Officer Hartley, Teddy L.)
*Other- Comments Required
competency stipulated - set for trial*

03/29/2013 **Status Conference** (10:15 AM) (Judicial Officer Hartley, Teddy L.)
*Trailing - Setting Jury Trial Dates
[Parties Present](#)*
Result: Held

03/29/2013 [TAP: STATUS CONFERENCE](#)
Courtroom 1 - 3/29/13 at 9:57:29am - Status - Hartley/Rodriguez

04/11/2013 [NTC: HEARING \(JURY TRIAL\)](#)
Aug 5-9, 2013 @ 8:30 am Hartley

06/21/2013 [SUBPOENA RETURNED](#)
Raymond Atchley served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Joanne Burness served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Douglas Davis served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Ross Reichard served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Johnny Zamora served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Victor Cansino served 06/21/13

06/21/2013 [SUBPOENA RETURNED](#)
Kevin Streine served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Monica Provolt served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
James Provolt served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Waldo Casarez served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Gloria Massey served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Hesiquia Ramirez served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Sam Saiz served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Debra Ramirez served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Sandy Loomis served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Dale Rice served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Randy Pitcock served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Jonathan Howard served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Roger Grah served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Wendall Blair served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Charlie Aguirre served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Rafael Aguilar served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Brent Aguilar served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
Dennis Fite served 06/21/13

06/24/2013 [SUBPOENA RETURNED](#)
US Postal Worker served 06/24/13

06/25/2013 [ORD: TO TRANSPORT](#) (Judicial Officer: Hartley, Teddy L.)

06/25/2013 [SUBPOENA RETURNED](#)
Victor Cansino served 06/24/13

06/25/2013 [SUBPOENA RETURNED](#)
Joshua Parkin served 06/24/13

07/03/2013 [ORD: ORDER](#)
from Supreme Court of NM; Judge Hartley is to preside over this cause

07/03/2013 [SUBPOENA RETURNED](#)
Johnny Zamora served 07/03/13

07/08/2013 [MTN: MOTION](#)
for certificate and subpoena to compel the attendance of witness from another state

07/08/2013 [CERTIFICATE](#)
of judge of the requesting-state for out-of-state witness

07/16/2013 [WITNESS LIST](#)
Additional

07/17/2013 [MTN: MOTION](#)
for certificate and subpoena to compel the attendance of witness from another state

07/17/2013 [CERTIFICATE](#)
of judge of the requesting state for out of state witness

07/17/2013 [SUBPOENA RETURNED](#)
Vicky Tubbs, ADC Medical Staff 7-16-13

07/17/2013 [SUBPOENA RETURNED](#)
Served on Plateau Records Custodian - Lana Waller 7-16-13

07/17/2013 [SUBPOENA RETURNED](#)
Served on Mona Gonzales, Wal-Mart 7-16-13

07/17/2013 [SUBPOENA RETURNED](#)
Served on Theresa Levacy - Walmart 7-16-13

07/18/2013 [WITNESS LIST](#)
Additional

07/22/2013 [WITNESS/ EXHIBIT DISCLOSURE](#)

07/22/2013 [SUBPOENA RETURNED](#)
Robert Telles served 07/18/13

07/22/2013 [SUBPOENA RETURNED](#)
James Patterson served 07/19/13

07/22/2013 [SUBPOENA RETURNED](#)
Donna Thibodeau served 07/19/13

07/24/2013 [ADDENDUM](#)
to defendant's witness disclosure

07/25/2013 [ORD: TO TRANSPORT](#) (Judicial Officer: Tatum, Drew D.)

07/25/2013 [ORD: TO TRANSPORT](#) (Judicial Officer: Tatum, Drew D.)

07/26/2013 [SUBPOENA RETURNED](#)
Grace Finkley served on 7/25/13

07/29/2013 **Status Conference** (9:30 AM) (Judicial Officer Hartley, Teddy L.)
[Parties Present](#)

Result: Held

07/29/2013 [TAP: STATUS CONFERENCE](#)
Courtroom 1 cd 9:32:20 Status conf 07/29/13 Richardson/Hartley

08/01/2013 [RESPONSE](#)
to defendant's motion to continue

08/01/2013 [ORD: OF CONTINUANCE](#)
CONTINUING JURY TRIAL OF 08/05 THRU 08/09/2013

08/05/2013 **CANCELED Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted
Day 1 of 5

08/06/2013 **CANCELED Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted
Day 2 of 5

08/07/2013 **CANCELED Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted
Day 3 of 5

08/08/2013 **CANCELED Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted
Day 4 of 5

08/09/2013 **CANCELED Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Continuance Granted
Day 5 of 5

08/16/2013 [REQUEST FOR HEARING/ SETTING](#)
Jury Trial

08/27/2013 [EXHIBIT RECEIPT](#)

08/29/2013 [NTC: HEARING \(JURY TRIAL\)](#)
October 7-11, 2013 at 8:30am Hartley

08/30/2013 [SUBPOENA RETURNED](#)
Served on Johnny Zamora 8-30-13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Dr. Ross Reichard, Mayo Clinic 8-30-13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Kevin Streine, NMDPS 8/30/13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Victory Cansino, Texas DPS 8-30-13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Dr. Douglas F. Davis, Ph.D. 8-30-13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Raymond Atchley, COMPAS Coordinator, NMDOC 8-30-13

08/30/2013 [SUBPOENA RETURNED](#)
Served on Vicky Tubbs 8-30-13

09/04/2013 [SUBPOENA RETURNED](#)
Sandy Loomis served 08/30/13

09/04/2013 [SUBPOENA RETURNED](#)
Hesiquia Ramirez served 09/03/13

09/04/2013 [SUBPOENA RETURNED](#)
Debra Ramirez served 09/03/13

09/04/2013 [SUBPOENA RETURNED](#)
Crimson Maes served 09/03/13

09/04/2013 [SUBPOENA RETURNED](#)
James Patterson served 09/03/13

09/04/2013 [SUBPOENA RETURNED](#)
Sam Saiz served 09/03/13

09/05/2013 [SUBPOENA RETURNED](#)
Randy Pitcock served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Dale Rice (CPD) served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Waldo Casarez served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Lt. Roger Grah served 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Brent Aguilar (CPD) served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Charlie Aguirre (CPD) served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Dennis Fite served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
Mona Gonzales served on 9/3/13

09/05/2013 [SUBPOENA RETURNED](#)
US Postal Worker served on 9/3/13

09/05/2013 [ORD: TO TRANSPORT](#)

09/05/2013 [SUBPOENA RETURNED](#)
Rafael Aguilar (CPD) served on 9/3/13

09/06/2013 [SUBPOENA RETURNED](#)
Plateau records served 09/04/13

09/06/2013 [SUBPOENA RETURNED](#)
Grace Finkey served 09/05/13

09/27/2013 [SUBPOENA RETURNED](#)
Theresa Levacy served 09/24/13

10/02/2013 [SUBPOENA RETURNED](#)
Mona Gonzales served 10/02/13

10/02/2013 [SUBPOENA RETURNED](#)
Vicky Tubbs served 10/01/13

10/02/2013 [SUBPOENA RETURNED](#)
Vicky Tubbs served 10/01/13

10/07/2013 **Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Day 1 of 5
[Parties Present](#)

Result: Held

10/07/2013 [AFFIDAVIT FOR ARREST WARRANT](#)
for material witness warrant for Debra Ramirez

10/07/2013 [COURT MINUTE](#)
Clerk's

10/07/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 8:40:40 - 8:58:09; 10:38:07 - 12:11:16 Jury Trial/Chambers 10/07/13 Rodriguez/Hartley

10/07/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 9:00:23 - 10:19:18; 12:13:12 - 5:20:41 Jury Trial 10/07/13 Rodriguez/Hartley

10/07/2013 **WAR: ARREST WARRANT ISSUED**

10/08/2013 **Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Day 2 of 5
[Parties Present](#)

Result: Held

10/08/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 8:41:35 Jury trial Day 2 10/08/13 Rodriguez/Hartley

10/09/2013 **Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Day 3 of 5
[Parties Present](#)

Result: Held

10/09/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 8:30:14 Jury trial Day 3 10/09/13 Rodriguez/Hartley

10/09/2013 [SUBPOENA RETURNED](#)
Josie Casillas served 10/04/13

10/09/2013 [SUBPOENA RETURNED](#)
Lupita Casillas served 10/04/13

10/09/2013 [SUBPOENA RETURNED](#)
Lupe Casillas served 10/04/13

10/09/2013 [SUBPOENA RETURNED](#)
Jose Carmello Ramirez served 10/04/13

10/10/2013 **Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Day 4 of 5
[Parties Present](#)

Result: Held

10/10/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 9:18:10 - 10:31:36; 11:03:22 - 4:44:18 Jury trial Day 4 10/10/13 Rodriguez/Hartley

10/10/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 10:40:24 - 11:01:44; 3:44:27 - 4:09:42 Jury trial Day 4 Chambers 10/10/13 Rodriguez/Hartley

10/11/2013 **Jury Trial** (8:30 AM) (Judicial Officer Hartley, Teddy L.)
Day 5 of 5
[Parties Present](#)

Result: Verdict

10/11/2013 [JURY INSTRUCTIONS](#)
As Given

10/11/2013 [MISCELLANEOUS ENTRY](#)
Judge's memo's (SEALED)

10/11/2013 [VERDICT GUILTY](#)
Count 1: First Degree Murder

10/11/2013 [SPECIAL VERDICT](#)
Firearm was used in the commission of the murder as charged in Count 1

10/11/2013 [VERDICT GUILTY](#)
Count 2: Tampering with evidence

10/11/2013 [VERDICT GUILTY](#)
Count 3: Tampering with evidence

10/11/2013 [TAP: JURY TRIAL](#)
Courtroom 1 cd 8:50:52 Jury trial Day 5 10/11/13 Rodriguez/Hartley

10/11/2013 [EXHIBIT RECEIPT](#)
(rec'd 10/29/13)

10/23/2013 [ORD: PRE-SENTENCE REPORT](#) (Judicial Officer: Hartley, Teddy L.)

11/08/2013 [ORD: TO QUASH \(NON-WARRANT\)](#) (Judicial Officer: Hartley, Teddy L.)
Bench warrant issued for witness 10/07/13 is quashed

11/08/2013 [WAR: ORDER QUASHING WARRANT](#)

12/09/2013 [REQUEST FOR HEARING/ SETTING](#)
12/10/2013 [NTC: Hearing.\(Sentencing\)](#)
Jan 8, 2014 @ 10:00 am Hartley
12/12/2013 [ORD: TO SHOW CAUSE](#)
12/30/2013 [ORD: TO TRANSPORT](#)
01/06/2014 [ORD: TO TRANSPORT](#)
Judge Hartley
01/08/2014 **Sentencing Hearing** (10:00 AM) (Judicial Officer Hartley, Teddy L.)
[Parties Present](#)
Result: Held
01/08/2014 [TAP: SENTENCE](#)
Courtroom 1 - 1/8/14 at 10:05:02am - Sentencing - Hartley/Hill
01/08/2014 [CLS: JUDGMENT/ SENTENCE/ COMMITMENT](#) (Judicial Officer: Judge, Division III)
2nd Judgement due to remand from Supreme Court (Judge Hartley)
02/07/2014 [NTC: OF APPEAL TO COURT OF APPEALS/ SUPREME COURT](#)
03/03/2014 [ORD: FOR FREE PROCESS](#)
03/12/2014 [DOCKETING STATEMENT / COURT OF APPEALS](#)
03/18/2014 [CERTIFICATE](#)
Clerk's
03/21/2014 [APPEAL GENERAL CALENDAR](#)
04/14/2014 [EXHIBIT DESIGNATION](#)
09/17/2014 [ORD: ORDER](#)
Supreme Court Order to forward exhibits to Supreme Court
09/17/2014 [AFFIDAVIT](#)
09/22/2014 [CERTIFICATE/ PROOF OF MAILING](#)
12/09/2014 [MTN: MOTION](#)
to Supplement the Record with a Transcript of Proceedings Occuring in Chambers on October 10, 2013 and for a 30-day Extension of Time to File Answer Brief
12/09/2014 [ORD: ORDER](#)
to Supplement the Record with a Transcript of Proceedings Occuring in Chambers on October 10, 2013 and for a 30-day Extension of Time to File Answer Brief
12/10/2014 [CERTIFICATE/ PROOF OF MAILING](#)
Supplement Record of CD/Tape Logs sent 12/10/14
04/15/2015 [ORD: ORDER DENYING](#)
Petition for writ of certiorari is denied
01/18/2017 [MANDATE/AFIRMED](#)
Dec 1, 2016, a decision was issued affirming Defendant's conviction
03/22/2017 [RPN: HABEAS CORPUS PETITION](#)
Petition for Writ of Habeas Corpus
04/25/2017 [PETITION \(NON-OPENING\)](#)
Petition for writ of Habeas Corpus
05/31/2017 [CLS: ORDER, APPLICATION, PETITION OR MOTION DENIED](#) (Judicial Officer: Tatum, Drew D.)
Court finds that Petitioner is not entitled to relief as a matter of law in this regard
06/20/2017 [RPN: HABEAS CORPUS PETITION](#)
Petition for Writ of Habeas Corpus
07/17/2017 [PETITION \(NON-OPENING\)](#)
Petition for writ of Habeas Corpus
07/27/2017 [ORD: APPOINTING ATTORNEY](#) (Judicial Officer: Tatum, Drew D.)
Public Defender appt.
08/15/2017 [NCJ: DISPOSITION ORDER](#)
Supreme Court Order: Petition for Writ of Certiorari is denied
08/21/2017 [ENTRY OF APPEARANCE](#)
10/23/2017 [ORD: DISTRICT COURT EXTENSION GRANTED](#) (Judicial Officer: Tatum, Drew D.)
Petitioner is allowed an additional 90 days from the filing of this Order for the preperation of an Amended Petition for Writ of Habeas
01/19/2018 [ORD: DISTRICT COURT EXTENSION GRANTED](#) (Judicial Officer: Tatum, Drew D.)
Petitioner is allowed an additional 90 days for preparation of an Amended Petition
04/13/2018 [MTN: MOTION/ PETITION TO EXTEND TIME](#)
to file Habeas Corpus
04/13/2018 [ENTRY OF APPEARANCE](#)
by Liane Kerr
04/17/2018 [ORD: DISTRICT COURT EXTENSION GRANTED](#) (Judicial Officer: Tatum, Drew D.)
30 day extention is granted
05/18/2018 [AMENDED/MODIFIED](#)
Petition for Writ of Habeas Corpus
06/15/2018 [ORD: ORDER](#) (Judicial Officer: Tatum, Drew D.)
Notice that the Court is Not Dismissing any Portion of the Amended Petition at this Time and Order for State to Respond to Amended Petition for Writ of Habeas Corpus
09/10/2018 [RESPONSE](#)
to Defendant's Amended Petition for Writ of Habeas Corpus
09/28/2018 [NTC: HEARING](#)
Preliminary Hearing on Writ of Habeas Corpus 10-29-18 at 2:30pm - Tatum
10/29/2018 **Preliminary Hearing** (2:30 PM) (Judicial Officer Tatum, Drew D.)
Def appear tele
[Parties Present](#)
Result: Held
10/29/2018 [AUDIO LOG NOTES](#)
Courtroom 1 - 10-29-18 at 2:32:51pm - Preliminary Hearing - Tatum/Casaus
12/14/2018 [CLS: ORDER, APPLICATION, PETITION OR MOTION DENIED](#) (Judicial Officer: Tatum, Drew D.)
Petitioner's petition for writ of habeas corpus is denied
02/13/2019 [ORD: ORDER DENYING](#) (Judicial Officer: Nakamura, Judith K.)
Petition for writ of certiorari is denied
06/24/2019 [RPN: HABEAS CORPUS PETITION](#)
07/31/2019 [NTC: NOTICE](#)
of 5-802(G)(1) initial review

08/12/2019	<u>CLS: ORDER, APPLICATION, PETITION OR MOTION DENIED</u> (Judicial Officer: Tatum, Drew D.) <i>Writ of Habeas is dismissed</i>
08/18/2020	<u>RPN: HABEAS CORPUS PETITION</u> <i>Amended Petition</i>
09/24/2020	<u>NTC: NOTICE</u> <i>of 5-802(H)(1) pre-appointment review</i>
09/24/2020	<u>MTN: MOTION</u> <i>to expand record</i>
10/05/2020	<u>CLS: ORDER WRIT OF HABEAS CORPUS</u> (Judicial Officer: Tatum, Drew D.) <i>Order of Summary Dismissal and Order Denying Motion to Expand Record</i>
12/27/2022	<u>RPN: HABEAS CORPUS PETITION</u> <i>Motion to amend Habeas Corpus petition</i>
12/27/2022	<u>MTN: MOTION TO AMEND/ MODIFY</u> <i>(Second Motion mailed - not exact copies)</i>
01/09/2023	<u>PETITION (NON-OPENING)</u> <i>3rd Habeas Corpus petition (Supplemental)</i>
02/08/2023	<u>NTC: NOTICE</u> <i>of Rule 5-802(H)(1) NMRA Pre-Appointment Review</i>
02/10/2023	<u>CLS: ORDER WRIT OF HABEAS CORPUS</u> (Judicial Officer: Tatum, Drew D.) <i>Decision and Order of Summary Dismissal</i>
07/06/2023	<u>RPN: HABEAS CORPUS PETITION</u>
08/21/2023	<u>NTC: NOTICE</u> <i>of 5-802(H)(1) Pre-Appointment review</i>
08/28/2023	<u>CLS: ORDER, APPLICATION, PETITION OR MOTION DENIED</u> (Judicial Officer: Tatum, Drew D.) <i>Decision and Order of Summary Dismissal and Order Denying Petitioner's Motion to Expand Record</i>

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Location : All Courts [Images](#)

REGISTER OF ACTIONS

[CASE No. S-1-SC-34576](#)

STATE V RAMIREZ

§
§
§
§
§

Case Type: Criminal - Capital Appeal
Date Filed: 03/07/2014
Location:

RELATED CASE INFORMATION

Related Cases

D-905-CR-2007-00434 (Appealed - District Court)

PARTY INFORMATION

Defendant - Appellant **RAMIREZ, ALBERT JOSE** *Prisoner ID 69597*
#69597
P.O. BOX 639
LAS CRUCES, NM 88004

Attorneys
Steven James Forsberg
Retained
505-796-4405(W)

Plaintiff - Appellee **STATE OF NEW MEXICO**

Yvonne Marie Chicoine
Retained
(505) 235-6155(W)

Jane A. Bernstein
Retained
(505) 717-3500(W)

EVENTS & ORDERS OF THE COURT

12/01/2016	DISPOSITIONS Decision - Affirm
OTHER EVENTS AND HEARINGS	
03/07/2014	FN: Free Process
03/07/2014	OPN: Statement of Issues CERTIFICATE OF MAILING APPEAL FROM THE DISTRICT COURT CURRY COUNTY - (CR-07-434) JUDGMENT, SENTENCE AND COMMITMENT - 1/8/14 NOTICE OF APPEAL 2/7/14 TEDDY L. HARTLEY, DJ
03/19/2014	Record Proper Filed TRANSCRIPT OF RECORD PROPER (2 VOLS.)
03/19/2014	NTC: General Calendar Assignment
04/14/2014	Audio Transcript Filed 3 CD'S (ORIG. + 2 COPIES - 2 CD'S PER SET)
04/14/2014	NTC: Transcript Filed
04/14/2014	NTC: Notice DESIGNATION OF EXHIBITS FILED IN DISTRICT COURT
07/01/2014	Sealed Pleading 1 SMALL ENV (JURY TRIAL JUDGE'S NOTES)
07/01/2014	NTC: Notice NOTICE OF SEALED PLEADING
08/12/2014	Brief In Chief HAND DELIVERY
08/26/2014	MTN: Motion to Supplement the Record on Appeal HAND DELIVERY MTN TO SUPPLEMENT THE RECORD WITH EXHIBITS AS DESCRIBED IN THE MTN
08/27/2014	ORD: Order Requesting Exhibits MOTION TO SUPPLEMENT RECORD WITH EXHIBITS GRANTED. DISTRICT COURT CLERK TO FORWARD STATE'S EXHIBITS 1-110 AND ANY EXHIBITS OFFERED OR ADMITTED AT 9/15/08 HEARING OR ASSOCIATED WITH ORDER FILED 3/1/13 IF MADE PART OF RECORD DISTRICT COURT CLERK ALSO TO CLARIFY WHETHER PAGES 255-264 ARE MISSING FROM RECORD PROPER OR JUST A NUMBERING ERROR
09/19/2014	Affidavit AFFIDAVIT FROM DC HEREBY CERTIFY THAT THERE ARE NO MISSING PAGES IN RECORD PROPER

EXHIBIT

DS2

09/26/2014	Exhibits Filed 1 LARGE ENV CONTAINS EXHIBITS 1 THROUGH 30 EXHIBIT 35 EXHIBITS 56 THROUGH 60 EXHIBITS 68 THROUGH 71 EXHIBITS 73 THROUGH 84 EXHIBITS 87 THROUGH 101 EXHIBIT 105 EXHIBITS 107 THROUGH 110 EXHIBIT 1 SEPTEMBER 15, 2008 COMPETENCY REPORT
10/07/2014	NTC: Exhibits Filed
12/01/2014	MTN: Motion to Supplement the Record on Appeal HAND DELIVERY MTN TO SUPPLEMENT THE RECORD WITH TRANSCRIPT OF PROCEEDINGS DATED 10/10/13 AND MTN TO EXT ANSWER BRIEF TO 1/9/15
12/08/2014	ORD: Order Granting Motion MOTION TO SUPPLEMENT RECORD WITH TRANSCRIPT OF IN-CHAMBERS PROCEEDINGS ON OCTOBER 10, 2013, IS GRANTED, AND TIME FOR FILING ANSWER BRIEF IS EXTENDED TO JANUARY 9, 2015.
12/15/2014	Audio Transcript Filed 3 CD'S - (ORIG. + 2 COPIES - 1 CD PER SET) SUPPLEMENTAL RECORD PROPER - 10/10/13
12/15/2014	NTC: Transcript Filed
01/09/2015	Answer Brief HAND DELIVERY
01/09/2015	MTN: Request for Oral Argument HAND DELIVERY (APPELLEE)
01/20/2015	Reply Brief HAND DELIVERY
01/22/2015	NTC: Case Submitted to Oral Argument/Briefs Only Calendar ORAL ARGUMENT SET FOR WEDNESDAY FEBRUARY 25TH AT 9:00 AM
12/01/2016	Majority - Author (Judicial Officer: Maes, Justice Petra Jimenez)
12/01/2016	Majority - Participant (Judicial Officer: Daniels, Chief Justice Charles W.)
12/01/2016	Majority - Participant (Judicial Officer: Chavez, Justice Edward L.)
12/01/2016	Majority - Participant (Judicial Officer: Vigil, Justice Barbara J.)
12/01/2016	Majority - Participant (Judicial Officer: Nakamura, Justice Judith K.)
01/11/2017	CLS: Mandate
09/07/2022	Entry of Appearance

REGISTER OF ACTIONS

CASE No. [S-1-SC-36599](#)

Ramirez v. Franco	§ § § § §	Case Type: Rule 12-501 Certiorari Proceeding - Habeas Corpus Date Filed: 06/27/2017 Location:
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RELATED CASE INFORMATION

Related Cases
D-905-CR-2007-00434 (Appealed - District Court)
D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Petitioner	Ramirez, Albert J. Prisoner ID #69597 #69597 P.O. Box1059 Santa Fe, NM 87504 DL: NM505115058	Male Unavailable [REDACTED] [REDACTED]	Attorneys Pro Se
Respondent	FRANCO, GERMAN 224 MULE DEER DRIVE LAS CRUCES, NM 88005 DL: NM054664630	Male [REDACTED] [REDACTED]	Martha Anne Kelly Retained 505-250-3302(W) Hector H. Balderas Retained 505-490-4824(W)

EVENTS & ORDERS OF THE COURT

08/11/2017	DISPOSITIONS Order - Denied
06/27/2017	OTHER EVENTS AND HEARINGS OPN: Petition
06/27/2017	Exhibits Filed
06/27/2017	Attached to Petition
06/27/2017	District Court Order Denying Habeas Corpus
08/11/2017	CLS: Order Denying Petition

FINANCIAL INFORMATION

	Petitioner Ramirez, Albert J.	
	Total Financial Assessment	125.00
	Total Payments and Credits	125.00
	Balance Due as of 12/06/2024	0.00
08/08/2017	Transaction Assessment	125.00
08/08/2017	Indigency	(125.00)

EXHIBIT

DS3

REGISTER OF ACTIONS

CASE No. [S-1-SC-37501](#)

Ramirez v. Gay

§
§
§
§
§

Case Type: Rule 12-501 Certiorari
Proceeding - Habeas Corpus
Date Filed: 01/28/2019
Location:

RELATED CASE INFORMATION

Related Cases
D-905-CR-2007-00434 (Appealed - District Court)
D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Petitioner	Ramirez, Albert J. Prisoner ID #69597 #69597 P.O. Box 1059 Santa Fe, NM 87504 DL: NM505115058	Male Unavailable [REDACTED] [REDACTED]	Attorneys Pro Se
Respondent	GAY, JOHN		Martha Anne Kelly Retained 505-250-3302(W)
			Hector H. Balderas Retained 505-490-4824(W)

EVENTS & ORDERS OF THE COURT

02/05/2019	DISPOSITIONS
	Order - Denied
01/28/2019	OTHER EVENTS AND HEARINGS
	OPN: Petition
	District Court Order Denying Habeas Corpus
	Exhibits Filed
	CLS: Order Denying Petition

FINANCIAL INFORMATION

	Petitioner Ramirez, Albert J.	
	Total Financial Assessment	125.00
	Total Payments and Credits	125.00
	Balance Due as of 12/06/2024	0.00
01/29/2019	Transaction Assessment	125.00
01/29/2019	Indigency	(125.00)

EXHIBIT

DS4

REGISTER OF ACTIONS

CASE No. [S-1-SC-37887](#)

Ramirez v. Santistevan	§ § § § §	Case Type: Rule 12-501 Certiorari Proceeding - Habeas Corpus Date Filed: 09/03/2019 Location:
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RELATED CASE INFORMATION

Related Cases
D-905-CR-2007-00434 (Appealed - District Court)
D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Petitioner	Ramirez, Albert J. Prisoner ID #69597 #69597 6900 W. Millen Drive Hobbs, NM 88244 DL: NM505115058	Male Unavailable [REDACTED]	Attorneys Pro Se
Respondent	SANTISTEVAN, DWAYNE		Martha Anne Kelly Retained 505-250-3302(W) Hector H. Balderas Retained 505-490-4824(W)

EVENTS & ORDERS OF THE COURT

09/13/2019	DISPOSITIONS Order - Denied
09/03/2019	OTHER EVENTS AND HEARINGS OPN: Petition
09/03/2019	District Court Order Denying Habeas Corpus
09/03/2019	Exhibits Filed Attached to Petition
09/13/2019	CLS: Order Denying Petition

FINANCIAL INFORMATION

	Petitioner Ramirez, Albert J. Total Financial Assessment Total Payments and Credits Balance Due as of 12/06/2024	125.00 125.00 0.00
09/05/2019	Transaction Assessment	125.00
09/05/2019	Indigency	(125.00)

EXHIBIT

DS5

REGISTER OF ACTIONS

CASE NO. S-1-SC-38539

Ramirez v. Martinez	§ § § § §	Case Type: Rule 12-501 Certiorari Proceeding - Habeas Corpus Date Filed: 10/26/2020 Location:
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RELATED CASE INFORMATION

Related Cases
D-905-CR-2007-00434 (Habeas - Appealed)
D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Petitioner	Ramirez, Alberto Prisoner ID #69597 Also Known As Ramirez, Albert Also Known As Ramirez, Albert J. Also Known As Ramirez, Albert Jose Also Known As Ramirez, Alberto Jose #69597 P.O. Box 1059 Santa Fe, NM 87502-1059 DL: NM505115058	Male Unavailable [REDACTED] [REDACTED]	Attorneys Pro Se
Respondent	MARTINEZ, LEON		John Kloss Retained 505-379-4611(W) Hector H. Balderas Retained 505-490-4824(W) Martha Anne Kelly Retained 505-250-3302(W)

EVENTS & ORDERS OF THE COURT

04/27/2021	DISPOSITIONS Order - Denied
10/26/2020	OTHER EVENTS AND HEARINGS OPN: Petition
10/26/2020	District Court Order Denying Habeas Corpus
10/26/2020	Exhibits Filed attached to petition
11/04/2020	Supplemental Pleading
11/16/2020	Supplemental Pleading
11/20/2020	Correspondence
01/04/2021	Correspondence
04/07/2021	Correspondence
04/27/2021	CLS: Order Denying Petition

FINANCIAL INFORMATION

	Petitioner Ramirez, Alberto	
	Total Financial Assessment	125.00
	Total Payments and Credits	125.00
	Balance Due as of 12/06/2024	0.00
10/26/2020	Transaction Assessment	125.00
10/26/2020	Indigency	(125.00)

EXHIBIT

DS6

REGISTER OF ACTIONS

CASE No. [S-1-SC-40134](#)

Ramirez v. Vigil Richards	§ § § § §	Case Type: Rule 12-501 Certiorari Proceeding - Habeas Corpus Date Filed: 10/05/2023 Location:
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RELATED CASE INFORMATION

Related Cases
D-905-CR-2007-00434 (Appealed - District Court)
D-506-CV-2024-01141 (Same Party)

PARTY INFORMATION

Petitioner	Ramirez, Alberto Jose Prisoner ID #459692 P.O. Box 639 Las Cruces, NM 88004 DL: NM505115058	Male Unavailable [REDACTED]	Attorneys Pro Se
Respondent	Vigil Richards, Jessica		Aletheia Vadin Pamela Allen Retained 505-527-2776(W)

EVENTS & ORDERS OF THE COURT

	DISPOSITIONS
11/20/2023	Order - Denied
	OTHER EVENTS AND HEARINGS
09/22/2023	OPN: Motion for Extension of Time to File Petition
09/28/2023	Non-Opening Pleading 12-501 Petition
09/28/2023	District Court Order Denying Habeas Corpus
09/28/2023	Exhibits Filed attached to the Petition
10/05/2023	ORD: Order Granting Motion to accept petition
10/12/2023	Miscellaneous Pleading
10/19/2023	Notice of Change of Address P.O. Box 639, Las Cruces, NM 88004
11/20/2023	CLS: Order Denying Petition

FINANCIAL INFORMATION

	Petitioner Ramirez, Alberto Jose	
	Total Financial Assessment	125.00
	Total Payments and Credits	125.00
	Balance Due as of 12/06/2024	0.00
10/05/2023	Transaction Assessment	125.00
10/05/2023	Indigency	(125.00)

